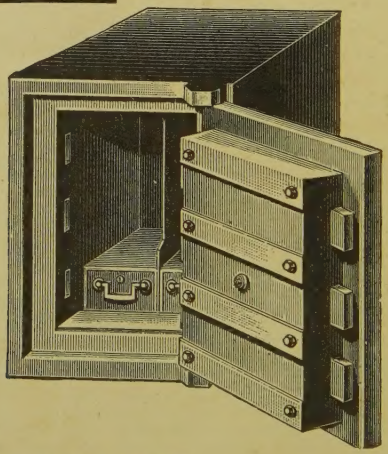
NO MORE LAWYERS' BILLS!

SIX-AND-EIGHTPENCE SAVED at Every Consultation!

"FAST BIND, FAST FIND."

WHITFIELD'S SAFES



FOR SECURITY AGAINST

FIRE AND THIEVES

OXFORD STREET,
BIRMINGHAM.
20, CHEAPSIDE,
LONDON.

OFFICE FURNITURE, IRON SAFES

TELEPHONE 4231.

Established over a Century.

Largest Stock in London to select from.

NEW & SECOND-HAND.

Bricklayers, Plumbers, Painters, Paperhangers,
Writers and Engravers, Shopfitters,
Carpets, Linoleums, Safes, Gasfitters, Smiths,
Blind-Makers, Upholsterers, Licensed Valuers,
Sanitary Engineers, Insurance & General Agents.

ELECTRIC LIGHTING & BELLS

ESTIMATES IN ALL DEPARTMENTS.
IRON SAFES REMOVED FOR THE TRADE.

A. ARDLEY & SON,

Offices: 17, GREAT ST. HELEN'S;

Workshops—3, Helmet Court;
Furniture Warehouses—10 & 27, Wormwood Street;

LONDON, E.C.

SAMPSON LOW, MARSTON & CO.'S PUBLICATIONS.

A FEW HINTS ON PROVING WILLS

WITHOUT PROFESSIONAL ASSISTANCE.

By A Probate Court Official.

New Edition, with Forms of Wills, &c. 12*mo, limp cloth,* 1*s.*

Now Ready. Price One Shilling.

THE RIGHTS, DUTIES, AND RELATIONS (LEGAL AND SOCIAL) OF DOMESTIC SERVANTS

AND THEIR MASTERS AND MISTRESSES. With a Short Account of Savings Banks, Government Annuities, Servants' Institutions, &c., and their advantages. Fifth Edition (Improved). By T. Henry Baylis, Q.C., M.A., V.D., a Bencher of the Inner Temple, and the Presiding Judge of the Court of Passage, Liverpool; Author of "The Temple Church Record and Guide."

THE CHAIRMAN'S HANDBOOK. Suggestions and Rules for the Conduct of Chairmen of Public and other Meetings, based upon the Procedure and Practice of Parliament. By Sir Reginald F. D. Palgrave, K.C.B., Clerk of the House of Commons. Twelfth Edition. Crown 8vo, cloth, 2s., post free.

". . . . Mr. Palgrave has tried to make the ways of public meetings easy, and the burden of chairmanship light. His position in the House of Commons gives him authority. The result is a most useful and timely handbook. . . ."—*Times.*

DOD'S PEERAGE, BARONETAGE, AND KNIGHTAGE for 1899. Crown 8vo, over 1,000 pages, handsomely bound, cloth extra gilt, gilt edges, 10s. 6d.

"Aims at giving a great deal of information in a small space, and signally succeeds in doing so. For purposes of rapid reference it has no competitor."—*Athenæum.*

HANDBOOK FOR PARISH MEETINGS. With a Form of Standing Orders for Regulating Procedure. By G. F. Emery, of the Inner Temple, Barrister-at-Law. Crown 8vo, boards, 2s.

HANDBOOK FOR PARISH COUNCILS. With a Form of Standing Orders for Regulating Procedure. By G. F. Emery, of the Inner Temple, Barrister-at-Law. Crown 8vo, boards, 2s.

HOW TO TREAT ACCIDENTS AND ILLNESSES. A Handbook for the Home. By Honnor Morten, Author of "The Nurse's Dictionary," &c. With Illustrations. Second Edition. Post 8vo, boards, 2s.; cloth, 2s. 6d.

HOW TO BECOME A JOURNALIST. A Practical Guide to Newspaper Work. By Ernest Phillips, M.I.J. With an Introduction by Mr. P. H. Dunbar, Vice-President of the Institute of Journalists, and Assistant Editor of the *Sheffield Daily Telegraph.* Post 8vo, boards, 2s.; cloth, 2s. 6d.

At all Booksellers and Newsagents.

SCRIBNER'S MONTHLY MAGAZINE. A Superb Illustrated Monthly. Price One Shilling.

Containing Contributions from the pens of many well-known Authors, among whom may be mentioned, Thomas Hardy, Walter Besant, Bret Harte, Henry James, Thomas Bailey Aldritch, Sir Edwin Arnold, Andrew Lang, Sarah Orme Jewett, H. M. Stanley, Robert Louis Stevenson, R. H. Stoddard, and Frank R. Stockton.

THE FISHING GAZETTE. A Journal for Anglers. Edited by R. B. Marston, Hon. Treas. of the Fly Fisher's Club. Published Weekly, price 2d. Subscription, 10s. 6d. per annum.

The *Gazette* contains every week Twenty folio pages of Original Articles on Angling of every kind. The paper has recently been much enlarged and improved.

"Under the editorship of Mr. R. B. Marston the *Gazette* has attained a high standing."

London: SAMPSON LOW, MARSTON & COMPANY, Limited, St. Dunstan's House, Fetter Lane, Fleet Street, E.C.

EVERY MAN'S OWN LAWYER.

By A BARRISTER.

"*Ignorantia juris non excusat.*"

EVERY MAN'S OWN LAWYER:

A HANDY BOOK

OF THE

PRINCIPLES OF LAW AND EQUITY.

COMPRISING

THE RIGHTS AND WRONGS OF INDIVIDUALS:

LANDLORD AND TENANT,
VENDORS AND PURCHASERS,
LEASES AND MORTGAGES,
REGISTRATION OF TITLE TO LAND,
PRINCIPAL AND AGENT,
PARTNERSHIP AND COMPANIES,
MASTERS, SERVANTS, AND WORKMEN,
CONTRACTS AND AGREEMENTS,
BORROWERS, LENDERS, AND SURETIES,
SALE AND PURCHASE OF GOODS,
CHEQUES, BILLS, AND NOTES,
BILLS OF SALE, BANKRUPTCY,
RAILWAY AND SHIPPING LAW,
LIFE, FIRE, AND MARINE INSURANCE,
ACCIDENT AND FIDELITY INSURANCE,
LIBEL AND SLANDER,
CRIMINAL LAW,
PARLIAMENTARY ELECTIONS,
COUNTY COUNCILS,
DISTRICT AND PARISH COUNCILS,
MUNICIPAL CORPORATIONS,
PUBLIC HEALTH AND NUISANCES,
COPYRIGHT, PATENTS, TRADE MARKS,
HUSBAND AND WIFE, DIVORCE,
INFANCY, CUSTODY OF CHILDREN,
TRUSTEES AND EXECUTORS,
CLERGY, CHURCHWARDENS, ETC.
GAME LAWS AND SPORTING,
INNKEEPERS, HORSES AND DOGS,
TAXES AND DEATH DUTIES,

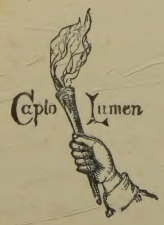
FORMS OF WILLS, AGREEMENTS, NOTICES, ETC.

By A BARRISTER.

THIRTY-SIXTH EDITION, CAREFULLY REVISED, INCLUDING THE LEGISLATION OF 1898.

TO WHICH IS ADDED

A CONCISE DICTIONARY OF LEGAL TERMS.



LONDON:
CROSBY LOCKWOOD AND SON,
7, STATIONERS' HALL COURT, LUDGATE HILL.
1899.

LONDON:
PRINTED BY J. S. VIRTUE AND CO., LIMITED,
CITY ROAD.

PREFACE

TO THE THIRTY-SIXTH EDITION.

For the present edition of Every Man's Own Lawyer, the text has again been carefully revised; and it is confidently believed that, in the result, the utility of the work as a Handy Book of Law will be found substantially increased. Throughout the revision, the object has been to strengthen the scope of the volume still further in those directions in which heads of households may be expected to require advice or assistance in matters of everyday law. In particular, the section relating to Joint Stock Companies has been extended.

Amongst the Acts of Parliament of interest to the readers of Every Man's Own Lawyer, passed since the last edition was issued twelve months ago, may be mentioned the *Benefices Act*, 1898 (making important changes in the law relating to presentations to livings); the *Marriage Act*, 1898 (concerning marriages to be celebrated in Nonconformist places of worship); the *Inebriates Act*, 1898 (providing for the detention in reformatories of habitual drunkards); the *Criminal Evidence Act*, 1898; the *Vaccination Act*, 1898; and the *Vagrancy Act*, 1898—to each of which, as well as to other enactments of the year, due attention has been paid.

Mention may also be made of the *Workmen's Compensation Act*, 1897—to which public attention has been so largely directed—and which is set out in this edition.

Judicial decisions given during the year upon some important points of law have also been duly incorporated in the text.

The hope may be once more expressed that EVERY MAN'S OWN LAWYER, being revised and brought up to date from year to year, will continue to be regarded as "an absolute necessity for every Englishman who desires to have some acquaintance with the laws of his country," and be found increasingly useful by legal practitioners as a record of current legislation and of judicial decisions upon subjects of popular interest.

Those readers who are not already familiar with the work will be pleased to have their attention directed to the admirable "INTRODUCTION" (see opposite page) of the original Author of "EVERY MAN'S OWN LAWYER."

LINCOLN'S INN,
December, 1898.

P.S.—After the sheets of this edition had gone to press, it appeared from a Memorandum as to Registration of Title to Land in the County of London, issued from the Land Registry (see *post*, p. 410), that registration under the Land Transfer Acts of 1875 and 1897 is now to be compulsory in the parishes of Hampstead, St. Pancras, St. Marylebone, and St. George's, Hanover Square, as from January 1, 1899; in the parishes of Shoreditch, Bethnal Green, Mile End Old Town, Wapping, St. George's-in-the-East, Shadwell, Ratcliff, Limehouse, Bow, Bromley, and Poplar, as from March 1, 1899; in the remainder of the County (not including the City of London) north of the centre line of the River Thames, except North Woolwich, as from October 1, 1899; in the remainder of the County (not including the City of London) as from January 1, 1900; and in the City of London, as from July 1, 1900.

The mode of registration thus made compulsory is registration with a "possessory title," which is effected on *primâ facie* evidence only, and does not involve any official investigation (see *post*, p. 411). It concerns all ordinary sales of freeholds, all sales of leaseholds having forty or more years still to run or two or more lives still to fall in, and grants of leases or underleases for like periods. Registration does not, however, apply to a lease created for mortgage purposes, or containing an absolute prohibition against alienation (sec. 20 of Act of 1897, and sec. 11 of Act of 1875, as amended by sch. 1 of Act of 1897).

INTRODUCTION.

"Ignorance of the Law excuses no man.—Every man must be taken to know the Law: to hold the contrary would be to confer a premium on ignorance, which would afford a defence to every possible transgression of the Law."—*Selden.*

THE object of the present work is to enable those who consult it to help themselves to the law; and thereby to dispense, as far as possible, with professional assistance and advice.

Our Laws have, in some respects, been so materially altered, in others so considerably extended; and so many new jurisdictions and tribunals have been created during the reign of the present Sovereign, that the task of producing, in a very condensed form, the substance or *cream* of the Laws of England, has been one of no ordinary labour.

If the Author has succeeded in the task, it is impossible to estimate the value of such a book to every man. There are many wrongs and grievances which persons submit to from time to time, through not knowing how or where to apply for redress; and many persons have as great a dread of a lawyer's office as of a lion's den.

The book is therefore intended to give every Englishman an opportunity, at the smallest possible cost, of placing upon his book-shelves a key to the laws of his country; and, as far as can be, to enable him to dispense with legal professional assistance; which (like medical advice) is sometimes a *necessary* evil: still there are questions and events occurring in every-day life among people of all classes, in which points of law

arise as to the legality of some step, pursuit, or transaction, which apparently cannot be decided without conferring with a Solicitor; and such conference assuredly leads to expense; whereas most of such questions may be answered without professional assistance, by first turning to the Index of the present work, and then consulting the book itself, at the page to which the inquirer will be referred.

The work being intended chiefly for non-professionals, the Author has endeavoured to render it as free as possible from technical language; and if, of necessity, hard legal phrases are occasionally used, they are explained in the context.*

Whilst the Author has been careful to make the work intelligible to all, he has at the same time made it as concise as possible; consistent with the view of producing, at the smallest cost, a complete epitome of the Laws of England: and has endeavoured to point out to those who consult it, how to seek and obtain redress for every injury and wrong: how to substantiate their rights: how to buy or sell an estate, a house, a ship, a horse, or any other thing: how to enter into contracts of all kinds, and with all persons: how to hire and let farms, houses, lands, and tenements: how to enter into agreements: how to take and give warranties, guarantees, notices, &c.; and perform in a legal manner, all such and many other every-day transactions. And although it is not always nor in every transaction that the services of a Solicitor can be dispensed with, still it is believed that many a *six-and-eightpence* may be saved; many a wrong redressed; many a right reclaimed; many an evil abated; many a law-suit avoided; and many an individual saved from heavy expenses, and, in some instances, from ruin and misery, by a careful consultation at home with the pages of this little Treatise.

* *Publisher's Note.*—Upon this point, the reader may be referred, also, to the DICTIONARY OF LEGAL TERMS now appended to the work.

Harold Glover.
8.8.99.

CONTENTS.

PART I.

ADMINISTRATION OF THE LAW.

SECTION		PAGE
I.	THE SUPREME COURT OF JUDICATURE	1
II.	PROCEDURE IN THE HIGH COURT	3
III.	OTHER JUDICIAL TRIBUNALS	12
IV.	SOLICITORS	14
V.	TRIAL BY JURY	19
VI.	COUNTY COURTS	24
VII.	JUDGMENT DEBTS: AND THE MEANS OF ENFORCING THEM	32
VIII.	MISCELLANEOUS MATTERS CONNECTED WITH PROCEDURE	38
IX.	LAW OF EVIDENCE	41
X.	ACTIONS AT LAW *in formâ pauperis*	46
XI.	JUSTICES OF THE PEACE	49
XII.	OTHER OFFICIALS CONCERNED IN ADMINISTRATION OF THE LAW:—	
	(i) Lord Lieutenants and Deputy Lieutenants	51
	(ii) Sheriffs	51
	(iii) Clerks of the Peace	51
	(iv) Coroners	52
XIII.	CONSTABLES	55

PART II.

CRIMINAL LAW.

I.	TREASONS, FELONIES, AND MISDEMEANORS	59
II.	TRESPASS TO LAND AND TO THE PERSON	80
III.	OFFENCES AGAINST MORALITY AND DECENCY	87
IV.	GOODS STOLEN OR LOST	94
V.	PROCEDURE IN CRIMINAL CASES	98

PART III.

PERSONAL RIGHTS AND REMEDIES.

I.	INFRINGEMENTS OF PERSONAL RIGHTS	101
II.	ACCIDENTS ARISING FROM NEGLIGENCE	102
III.	MARRIAGE OF BRITISH SUBJECTS ABROAD	110
IV.	ILLEGAL NAVAL OR MILITARY EXPEDITIONS	112

PART IV.

THE GAME LAWS AND SPORTING.

SECTION		PAGE
I.	PURSUIT, KILLING, AND SELLING OF GAME	113
II.	FISHING AND FISHERIES	128
III.	HORSES AND DOGS	131
IV.	WAGERS, BETS, GAMING, ETC.	138

PART V.

MERCANTILE AND COMMERCIAL LAW.

I.	STOCK EXCHANGE LAW AND PRACTICE	145
II.	JOINT-STOCK COMPANIES	148
III.	PARTNERS AND PARTNERSHIPS	166
IV.	PRINCIPAL AND AGENT	170
V.	CONTRACTS AND AGREEMENTS	175
VI.	SALE AND PURCHASE OF GOODS	192
VII.	MONEY AND SECURITIES FOR MONEY :—	
	(i) Payment of Money	200
	(ii) Bills of Exchange, Cheques, etc.	202
	(iii) Bills of Sale	211
	(iv) Guarantees and Suretiship	214
VIII.	BANKRUPTCY	218
IX.	SHIPPING LAW	244
X.	INSURANCE :—	
	(i) Life Insurance	258
	(ii) Fire Insurance	264
	(iii) Marine Insurance	268
	(iv) Insurance against Accident	271
	(v) Fidelity Insurance	273
XI.	BAILMENTS	275
XII.	PAWNBROKERS	283
XIII.	ILLEGAL DETENTION OF GOODS	289
XIV.	CARRIAGE OF PASSENGERS AND GOODS	291
XV.	WEIGHTS AND MEASURES	298

PART VI.

COPYRIGHT, PATENTS, AND TRADE MARKS.

I.	COPYRIGHT	301
II.	PATENTS, DESIGNS, AND TRADE MARKS	313

PART VII.

LIBEL AND SLANDER 321

PART VIII.

MASTERS, SERVANTS, AND WORKMEN.

SECTION		PAGE
I.	MASTER AND SERVANT	335
II.	EMPLOYER AND WORKMAN	347
III.	MASTER AND APPRENTICE	359
IV.	FRIENDLY SOCIETIES	363
V.	INDUSTRIAL AND PROVIDENT SOCIETIES	363
VI.	BUILDING SOCIETIES	364

PART IX.

HOUSES AND LANDS.

I.	LANDLORD AND TENANT	367
II.	VENDORS AND PURCHASERS	403
III.	EASEMENTS AND PRESCRIPTIVE RIGHTS	413
IV.	REAL PROPERTY	423
V.	MORTGAGES	435

PART X.

MARRIAGE, HUSBAND AND WIFE, AND CHILDREN.

I.	MARRIAGE CONTRACTS	441
II.	HUSBAND AND WIFE IN RELATION TO PROPERTY	449
III.	DIVORCE AND MATRIMONIAL CAUSES	456
IV.	INFANCY	466
V.	CUSTODY AND CONTROL OF CHILDREN	471

PART XI.

WILLS, EXECUTORS AND ADMINISTRATORS, AND TRUSTEES.

I.	THE MAKING OF WILLS	477
II.	THE PROVING OF WILLS	489
III.	INTESTACY	490
IV.	EXECUTORS AND ADMINISTRATORS	494
V.	TRUSTS AND TRUSTEES	500

PART XII.

PUBLIC HEALTH AND GOOD ORDER.

I.	INSANITARY HOUSES AND AREAS	509
II.	OFFENCES AGAINST PUBLIC HEALTH	513
III.	WATER SUPPLY	524
IV.	RIGHTS AND LIABILITIES AS TO NUISANCES	526
V.	EXPLOSIVES	530
VI.	REGULATION OF HIGHWAYS	532
VII.	MEDICAL LAW	541
VIII.	ASYLUMS	549
IX.	REGISTRATION OF BIRTHS AND DEATHS	552

PART XII. (*continued*).

PUBLIC HEALTH AND GOOD ORDER.

SECTION	PAGE
X.—BURIAL OF THE DEAD	555
XI.—SUNDAY TRADING	557
XII.—INNKEEPERS AND THEIR CUSTOMERS	559
XIII.—MISCELLANEOUS MATTERS	569

PART XIII.

PARLIAMENTARY ELECTIONS 573

PART XIV.

LOCAL GOVERNMENT.

I.—REGISTRATION OF ELECTORS	587
II.—COUNTY COUNCILS	589
III.—MUNICIPAL CORPORATIONS	598
IV.—BOARDS OF GUARDIANS AND DISTRICT COUNCILS	604
V.—PUBLIC ELEMENTARY SCHOOLS	606
VI.—LIBRARY AUTHORITIES	608
VII.—TECHNICAL INSTRUCTION UNDER LOCAL AUTHORITIES	609
VIII.—DIVISION OF PARISHES	610
IX.—VESTRY MEETINGS	611
X.—PARISH MEETINGS AND PARISH COUNCILS	617
XI.—OVERSEERS OF THE POOR AND RATES	627
XII.—CHARITABLE TRUSTS	630
XIII.—CORRUPT PRACTICES IN PUBLIC BODIES	634

PART XV.

CHURCH AND CLERGY.

I.—THE CLERGY AND THEIR OFFICE	635
II.—LEGAL AND ILLEGAL RITUAL	641
III.—CHURCHWARDENS AND OTHER LAY OFFICERS OF THE CHURCH	643
IV.—ECCLESIASTICAL PROPERTY	655

PART XVI.

TAXES, EXCISE LICENCES, AND DEATH DUTIES.

I.—ASSESSED TAXES AND EXCISE LICENCES	659
II.—LEGACY, SUCCESSION, AND DEATH DUTIES	665

CONCISE DICTIONARY OF LEGAL TERMS . . . 673

INDEX 705

LIST OF WORKS REFERRED TO,

WITH TABLE OF ABBREVIATIONS.

ABBREVIATIONS.	NAME OF WORK, ETC.
A. & E.	Adolphus & Ellis's Reports.
A. E. & B.	Adolphus, Ellis, & Blackburn's Reports.
Addison, Torts	Addison on Torts.
Addison, Contr.	Addison on Contracts.
Amb.	Ambler's Reports.
Ans.	Anstruther's Reports.
App. Cas.	Law Reports, Appeal Cases.
Arch. Cr. Pl. & Ev.	Archbold's Criminal Pleading and Evidence.
Atk.	Atkin's Reports.
B. & C.	Barnewall & Cresswell's Reports.
Bac. Abr.	Bacon's Abridgment.
B. & Ald.	Barnewall & Alderson's Reports.
B. & Adol.	Barnewall & Adolphus's Reports.
Ball & Be.	Ball & Beatty, Irish Chancery Reports.
Beav.	Beavan's Reports.
Bell, C. C.	Bell's Chancery Cases.
B. & S.	Best & Smith's Reports.
Bing.	Bingham's Reports.
Bing. N. C.	Bingham's New Cases.
Black. Comm.	Blackstone's Commentaries.
Bli.	Bligh's Reports.
Bli. (N. S.)	Bligh's Reports (New Series).
B. & B.	Broderick & Bingham's Reports.
B. & P.	Bosanquet & Pullen's Reports.
Br. Leg. Max.	Broom's Selection of Legal Maxims.
Bro. C. C.	Brown's Chancery Cases.
Bro. P. C.	Brown's Parliamentary Cases.
Bull. N. P.	Buller's Nisi Prius.
Bulst.	Bulstrode's Reports.
Burr.	Burrow's Reports.
C. B.	Common Bench Reports.
C. B. (N. S.)	Common Bench Reports (New Series).
Camp.	Campbell's Nisi Prius Reports.
Car. & M.	Carrington & Marshman's Reports.
Car. & P.	Carrington & Payne's Reports.
C. & K.	Carrington & Kirwan's Reports.
C. M. & R.	Crompton, Meeson, & Roscoe's Reports.
Ch. D.	Law Reports, Chancery Division.
Chit.	Chitty's Reports.
Chit. Arch. Pract.	Chitty's Archbold's Practice of the Common Law Divisions.
Chit. Contr.	Chitty on Contracts.
Chit. Cr. L.	Chitty's Criminal Law.

ABBREVIATIONS.	NAME OF WORK, ETC.
Cl. & Fin.	Clarke & Finnelly's Reports.
Co. (or Co. Rep.)	Coke's Reports.
Co. Litt.	Coke upon Littleton.
Coll. Rep.	Collyer's Reports.
Com. Dig.	Comyn's Digest.
Coop. C. C.	Cooper's Chancery Cases.
Cowp.	Cowper's Reports.
Cr. & Ph.	Craig & Phillips' Reports.
Cro. Car.	Croke's Reports, *temp.* Charles.
Cro. Eliz.	Croke's Reports, *temp.* Elizabeth.
Cro. Jac.	Croke's Reports, *temp.* James.
Cr. & M.	Crompton & Meeson's Reports.
Cr. & J.	Crompton & Jervis's Reports.
Cru. Dig.	Cruise's Digest.
C. P. *or* C. P. D.	Law Reports, Common Pleas Division.
D. & B.	Dearsley & Bell's Reports.
D. & C.	Deacon & Chitty's Bankruptcy Reports.
D. & L.	Dowling & Lowndes' Reports.
D. & M.	Davison & Merivale's Reports.
D. & S.	Drewry & Smale's Reports.
De G. & F.	De Gex & Fisher's Reports.
De G. & J.	De Gex & Jones' Reports.
De G. J. & S.	De Gex, Jones, & Smith's Reports.
De G. & S.	De Gex & Smale's Reports.
De G. M. & G.	De Gex, MacNaughten, & Gordon's Reports.
Den. C. C.	Denison's Crown Cases.
Doug.	Douglas's Reports.
Dow	Dow's Reports.
Dow & Cl.	Dow & Clark's Reports.
Dowl.	Dowling's Reports.
Dowl. & R.	Dowling & Ryland's Reports.
Drew. & War.	Drewry and Warren's Reports.
East.	East's Reports.
East, P. C.	East's Pleas of the Crown.
E. & B.	Ellis & Blackburn's Reports.
E. B. & E.	Ellis, Blackburn, & Ellis's Reports.
E. & E.	Ellis & Ellis's Reports.
Esp.	Espinasse's Reports.
Ex. *or* Ex. D.	Law Reports, Exchequer *or* Exchequer Division.
F. & F.	Foster & Finlason's Reports.
Folk. Sl. & Lib.	Folkard's Law of Slander and Libel.
Gale on Ea.	Gale on Easements.
G. & D.	Gale & Davison's Reports.
Gif.	Gifford's Reports.
Gilb. Distr.	Gilbert on Distress.
Godb.	Godbolt's Reports.
Hale, P. C.	Hale's Pleas of the Crown.
Har. & W.	Harrison & Wollaston's Reports.
Hawk. P. C.	Hawkins's Pleas of the Crown.
H. Black.	Henry Blackstone's Reports.
Holt's Rep.	Holt's Reports.
H. L. C.	Law Reports, House of Lords Cases.
H. & C.	Hurlstone & Coltman's Reports.
H. & M.	Hemming & Miller's Reports.
H. & N.	Hurlstone & Norman's Reports.

ABBREVIATIONS.	NAME OF WORK, ETC.
H. & Tw.	Hall & Twell's Reports.
Jarm. on Wills	Jarman on Wills.
J. & H.	Johnson & Hemming's Reports.
J. & W.	Jacob & Walker's Reports.
J. P.	Justice of the Peace.
Jur.	Jurist Reports.
Keen	Keen's Reports.
K. & J	Kay & Johnson's Reports.
Kn.	Knapp's Reports.
Lamb. Off. Ch.	Lamb's Office of Churchwarden.
L. J. Admr.	Law Journal Reports, Admiralty.
L. J. Ch. *or* Ch. D.	,, ,, Chancery Division.
L. J. C. P. *or* C. P. D.	,, ,, Common Pleas Division.
L. J. Ex. *or* Ex. D.	,, ,, Exchequer Division.
L. J. M. C.	,, ,, Magistrates' Cases.
L. J. Q. B. *or* Q. B. D.	,, ,, Queen's Bench Division.
L. J. P. M. & A. D.	,, ,, Probate, etc., Division.
L. J. P. C. C.	,, ,, Privy Council Cases.
L. M. & P.	Lowndes, Maxwell, & Pollock's Reports.
L. R. Ch. *or* Ch. D.	Law Reports, Chancery Division.
L. R. Q. B. *or* Q. B. D.	,, ,, Queen's Bench Division.
L. R. C. P. *or* C. P. D.	,, ,, Common Pleas Division.
L. R. Ex. *or* Ex. D.	,, ,, Exchequer Division.
L. R. P. D. & A. D.	,, ,, Probate, etc., Division.
L. R. App. Ca.	,, ,, Appeal Cases.
L. T. Rep.	Law Times Reports.
L. T. (N. S.)	,, ,, ,, New Series.
Leach	Leach's Reports.
Leon.	Leonard's Reports.
Lew.	Lewin's Crown Cases.
L. & C.	Leigh & Cave's Crown Cases.
McN. & G.	MacNaghten & Gordon's Reports.
Mad.	Maddock's Reports.
M. & G.	Manning & Grainger's Reports.
M. & R.	Manning & Ryland's Reports.
M. & S.	Maule & Selwyn's Reports.
M. & M.	Moody & Malkin's Reports.
M. & W.	Meeson & Welsby's Reports.
McC. *or* McC. & Y.	McCleland's *or* McCleland & Young's Reports.
Mer.	Merivale's Reports.
Mod.	Modern Reports.
Moo. & Rob.	Moody & Robinson's Reports.
M. & P.	Moore & Payne's Reports.
Moore	Moore's Reports.
My. & Cr.	Mylne & Craig's Reports.
My. & K.	Mylne & Keen's Reports.
Nev. & Man.	Neville & Manning's Reports.
N. & P.	Neville & Perry's Reports.
P. & D.	Perry & Davidson's Reports.
P. Wms.	Peere Williams' Reports.
Peake	Peake's Cases.
Phillips	Phillips's Reports.
Prid. Ch. Guide	Prideaux's Churchwarden's Guide.
Q. B. *or* Q. B. D.	Law Reports, Queen's Bench *or* Queen's Bench Division.

ABBREVIATIONS.	NAME OF WORK, ETC.
Raym.	Raymond's Reports.
Rob.	Robinson's Admiralty Reports.
Roll. Abr.	Rolle's Abridgment.
Russ. on Cr.	Russell on Crimes.
Russ. & Myl.	Russell & Mylne's Reports.
Russ. & R.	Russell & Ryan's Reports.
R. & M.	Ryan & Moody's Reports.
Salk.	Salkeld's Reports.
Saund.	Saunders' Reports.
Sc.	Scott's Reports.
Sc. (N. S.)	Scott's Reports (New Series).
Sel. N. P.	Selwyn's Nisi Prius.
Shaw, Par. L.	Shaw's Parish Law.
Sim.	Simons' Reports.
S. & G.	Smale & Giffard's Reports.
Sm. Act. at Law	Smith's Action at Law.
Smith L. C.	Smith's Leading Cases.
Smith M. & S.	Smith's Master & Servant.
Sp. Eq. Jur.	Spence's Equitable Jurisdiction.
Stark.	Starkie's Reports.
Steer, Par. L.	Steer's Parish Law.
Story's Eq. Jur.	Story's Equity Jurisprudence.
St. Tr.	State Trials.
Str.	Strange's Reports.
S. & S.	Simons & Stewart's Reports.
Sug. V. & P.	Sugden's Vendors & Purchasers.
Sw. & Tr.	Swabey & Tristram's Reports.
Swanst.	Swanston's Reports.
Taunt.	Taunton's Reports.
Taylor, Evid.	Taylor's Law of Evidence.
Times L. R.	*Times* (Weekly) Law Reports.
T. R.	Term Reports (Durnford & East's).
T. & Russ.	Turner & Russell's Reports.
Tud. L. C.	Tudor's Leading Cases.
Tyr.	Tyrwhitt's Reports.
Tyr. & Gr.	Tyrwhitt & Grainger's Reports.
Vaugh.	Vaughan's Reports.
Ventr.	Ventris's Reports.
Vern.	Vernon's Reports.
Ves.	Vesey's Reports.
Ves. Jun.	Vesey, Junr.'s, Reports.
Ves. Sen.	Vesey, Sen.'s, Reports.
W. R.	Weekly Reporter.
White & T., L. C. Eq.	White & Tudor's Leading Cases.
Willes	Willes' Reports.
W. Bl.	Wm. Blackstone's Reports.
Wms. Saund.	Williams' Saunders' Reports.
Wms. Exors.	Williams on Executors.
Wms. Persl. Pro.	Williams on Personal Property.
Wms. Real Pro.	Williams on Real Property.
Wils.	Wilson's Reports.
Woodf. L. & T.	Woodfall's Law of Landlord and Tenant.
Y. & Col.	Young & Collier's Reports.
Y. & J.	Young & Jervis's Reports.

EVERY MAN'S OWN LAWYER.

PART I.

ADMINISTRATION OF THE LAW.

SECTION I.—THE SUPREME COURT OF JUDICATURE.

By the Judicature Act, 1873, the then existing Courts of Chancery, Queen's Bench, Common Pleas, Exchequer, Admiralty, and Probate and Divorce, were consolidated, and constituted one Supreme Court of Judicature, comprising the "High Court" and the "Court of Appeal." Upon the former of these, under the name of "Her Majesty's High Court of Justice," was conferred original jurisdiction, with certain appellate jurisdiction from inferior courts; upon the latter, under the name of "Her Majesty's Court of Appeal," was conferred appellate jurisdiction, with certain original jurisdiction incident to the determination of any appeal.

Judges of the High Court of Justice.—Several alterations have been made in the constitution of the High Court of Justice since 1873. As now constituted, the Judges of the High Court consist of the Lord Chancellor for the time being, who is President; the Lord Chief Justice of England for the time being, who is President in the absence of the Lord Chancellor; the several Justices of the Chancery Division; the several Justices of the Queen's Bench (or Common Law) Division; and the Judges of the Probate, Divorce, and Admiralty Division.

Judges of the Court of Appeal.—The Court of Appeal, as

now constituted, consists of the *ex-officio* Judges, the Master of the Rolls, and five Lords Justices. The *ex-officio* Judges are the Lord Chancellor, every person who has held the office of Lord Chancellor (if upon request of the Lord Chancellor he consents to act), the Lord Chief Justice of England, and the President of the Probate, Divorce, and Admiralty Division.

Jurisdiction of the High Court of Justice.—The High Court of Justice is a Superior Court of Record, and exercises the jurisdiction previously exercised by the Court of Chancery, the superior Courts of Common Law (Queen's Bench, Common Pleas, and Exchequer), the High Court of Admiralty, the Courts of Probate and Divorce, the Court of Common Pleas at Lancaster, the Court of Pleas at Durham, and the Courts created by Commissions of Assize.

For the convenient despatch of business the High Court sits in three "Divisions," called respectively the Chancery Division, the Queen's Bench Division, and the Probate, Divorce, and Admiralty Division. (The titles and offices of Chief Baron of the Exchequer and Chief Justice of the Common Pleas were finally abolished in 1881, when the three Common Law Divisions were united in the present Queen's Bench Division.)

The London Bankruptcy Court, since the Bankruptcy Act, 1883, has been united with the Supreme Court of Judicature.

Jurisdiction of the Court of Appeal.—The Court of Appeal is a Superior Court of Record, and exercises all jurisdiction and powers previously exercised by the Courts of Appeal in Chancery and Bankruptcy, and from the County Palatine of Lancaster and the Court of the Lord Warden of the Stannaries; all jurisdiction of the Court of Exchequer Chamber; and all jurisdiction capable of being exercised by Her Majesty in Council or the Judicial Committee of the Privy Council upon appeals from the High Court of Admiralty, or from any Order in Lunacy made by the Lord Chancellor or any other person having jurisdiction in Lunacy. The Court of Appeal hears and determines appeals from the High Court of Justice, or from any of the Judges thereof.

Appeals to the House of Lords.—The jurisdiction of the House of Lords as a Court of Appeal is regulated by an Act of 1876, as varied in the matter of the qualification of a Lord of Appeal by an Act of 1887.

Sittings.—The old division of the legal year into Terms has now ceased, and Sittings for the trial, either with or without a jury, of causes entered for trial "in London" or "in Middlesex" are held continuously throughout the year, as far as practicable subject to vacations. Since the erection of the

Royal Courts of Justice in the Strand, the sittings have been held there—instead of, as formerly, at Westminster Hall and the Guildhall in the City of London; but by an Act of 1891 it was provided that sittings may again be held in the City of London by the Judges of the High Court for the trial of causes.

Court of Criminal Appeal.—Questions of law arising in criminal trials, which were formerly reserved for the "Court for Consideration of Crown Cases Reserved," are committed to the jurisdiction of the Judges of the High Court of Justice, or of five of them at the least, of whom the Lord Chief Justice of England must always be one, unless prevented by illness.

Official Referees.—Attached to the Supreme Court are permanent officers, called Official Referees, for the trial of such questions as shall be directed to be tried by such Referees. Subject to the right to a trial by Jury, the Court may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) to any Official or Special Referee, whose report may be adopted wholly or partially by the Court. And any cause or matter (other than a criminal proceeding), in which all parties who are under no disability consent, may be ordered to be tried before an Official Referee.

Assessors.—The High Court, or the Court of Appeal, may also, in any cause or matter in which it may think it expedient so to do, call in one or more Assessors specially qualified, for the assistance of the Court. In the Probate, Divorce, and Admiralty Division, it is a common practice to call in Assessors in nautical cases.

SECTION II.—PROCEDURE IN THE HIGH COURT.

Changes under the Judicature Acts.

The general effect of these changes in our system of Judicature is to give to every branch of the High Court of Justice all the jurisdiction previously vested in the old Courts of Law and Equity separately. It follows, therefore, that any one branch of the Court, if asked to do so, can deal with the whole transaction out of which an Action arises, and settle the rights of all parties concerned. The Court may apply all remedies in respect of any claim, legal or equitable, to which any of the parties actually before it may be entitled, so that

all matters in controversy may be determined, and multiplicity of Actions avoided.

Claims by joint Plaintiffs may be combined with claims by them or any of them severally, against the same Defendant. The Defendants need not all be interested as to all the relief claimed, or as to every cause of Action. Claims by and against parties in their individual capacity may, speaking generally, be joined with claims by and against them in a representative capacity. And, with few exceptions, any number of causes of Action may be combined in one Action, subject to the power of a Judge to prevent injustice or inconvenience by an incongruous mixture of claims in one trial.

To the Defendant also a wide latitude is now given as to matters which he may bring before the Court. Not only may he raise any legal or equitable defence, in the strict sense of the term, but he has extended rights of set-off. Formerly the only set-off allowed was a set-off of debt against debt: if either the Plaintiff's claim, or the Defendant's cross-claim, was by way of damages, there was no set-off, even though the amount of damages might be a mere matter of calculation. But now the right of set-off exists whether the claims be for debt or for damages.

But the Defendant's right is not limited to merely setting off his claim against that of the Plaintiff. He may, by way of counter-claim, set up against the Plaintiff any claim, and seek any relief, which he could have made the ground of a cross-Action at law or Suit in equity. And any relief to which he may prove entitled may be awarded to him. And if, in the case of pecuniary claims, it appear that the ultimate balance is in his favour, judgment may be given for him for that balance. Nor does the Defendant's right stop here. He may not only, by his counter-claim, seek relief against the Plaintiff; he may claim like relief, if only it relate to or be connected with the original subject of the Action, against any third person, whether already a party to the Action or not.

Actions in the High Court.

An Action in the High Court of Justice is initiated by Writ of Summons, and in some cases by Originating Summons, indorsed with a statement of the nature of the claim made, or the relief or remedy required, the Division of the High Court to which it is to be assigned being specified.

If a Plaintiff sues by a Solicitor (or a Defendant defends by a Solicitor) such Solicitor must indorse upon the writ the Plaintiff's (or Defendant's) address, and also that of his own;

and if (as to writs issued out of the London office) his place of residence be more than three miles from Temple Bar, he must supply another address for service within that distance; or if the writ be issued out of a District Registry, an address within such district must be given. A Plaintiff suing (or Defendant defending) in person must indorse upon the writ his place of residence and occupation; but if the writ be issued out of the London office, an address for service within three miles of Temple Bar must also be given, where communications may be left for him. If the writ be issued out of a District Registry, an address for service must be given within such district.

Service of Writ.—No service is required if a Defendant by his Solicitor agrees to accept service and enters an appearance. In other cases personal service must be made, if practicable; but when not, the Court or a Judge may order substituted service.

Service in an Action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ either upon the door of the dwelling-house, or in some conspicuous part of the property.

Appearance.—If any Defendant to a writ issued in a District Registry reside or carry on business within the district, he must enter appearance in the District Registry. If he neither resides in nor carries on business in the district, he may enter appearance either at the District Registry or in London. If entered in London, the Action will proceed in London; but a Judge may, on sufficient cause shown, order the Action to proceed in the District Registry.

Statement of Claim.—Unless the Defendant, at the time of entering appearance or within 8 days, states that he requires the delivery of a statement of claim, no statement need be delivered. If no statement has been delivered and Defendant requires one, the Plaintiff must within 5 weeks from appearance deliver such to the Defendant, who must then within 10 days deliver to the Plaintiff a statement of his defence, set-off, or counter-claim.

Such statements must be as brief as the nature of the case will admit. A reply must be delivered in Admiralty Actions within 6 days, and in all other Actions within 21 days, after the delivery of the last Statement of Defence.

Pleadings.—All pleadings containing 10 folios (of 72 words each) and upwards must be printed. But if under 10 folios, it is optional whether they be printed or written. But in any Action the Plaintiff may now indorse his writ for trial *without*

pleadings, and must then give 21 days' notice of trial within 10 days from appearance, unless the Defendant within the same period applies for and obtains an order for pleadings to be delivered.

Default of Pleading.—If the Plaintiff, being bound to deliver a statement of claim, fails to do so within the time allowed, the Defendant may apply to the Court or a Judge to dismiss the Action, with costs, for want of prosecution.

If the Plaintiff's claim be only for a debt or liquidated demand, and the Defendant fails to deliver a defence within the time allowed, the Plaintiff may, at the expiration of that time, enter final judgment for the amount claimed, with interest at 5 per cent. per annum, and costs; or in Actions where the Writ has been "specially indorsed," judgment may be applied for upon an Affidavit of the Plaintiff verifying the claim, unless the Defendant shall satisfy the Judge by affidavit, by his own *viva voce* evidence, or otherwise, that he has a good ground of defence. Upon such an application coming before him, the Judge may with the consent of all parties dispose of the Action finally and without appeal in a summary manner; or he may set down the case in a special list for speedy hearing.

Payment into Court.—In any Action to recover a debt or damages a Defendant may, at any time after service of the writ, and before or at the time of delivering his defence, or, by leave of the Court or a Judge, at any later time, pay into Court a sum of money by way of satisfaction or amends. If the Plaintiff refuses to accept the amount so paid in satisfaction, but proceeds with the Action, and the verdict be for an amount not beyond that paid into Court, he will have to pay the Defendant's costs.

Where an Action is tried by a Judge with a Jury, no communication to the Jury may be made until after the verdict is given, either of the fact that money has been paid into court or of the amount paid in, the Jury being required to find the amount of the debt or damages without reference to any payment into court.

Interrogatories.—On an application by either Plaintiff or Defendant for leave to deliver interrogatories, the particular interrogatories proposed to be delivered must be submitted to the Court or Judge, and leave will be given as to such only of the interrogatories submitted as the Court or Judge shall consider necessary.

Appeals from District Registrars.—Any person affected by any order or decision of a District Registrar may appeal to a Judge

by summons within 4 days, or such further time as may be allowed by a Judge or the Registrar.

Notice of Trial.—Ten days' notice of trial must be given, unless consent has been given to take short notice. Short notice of trial means *four* days' notice.

Mode of Trial.—The Court or a Judge may direct the trial without a Jury of cases in which inquiries or investigations are required which cannot be conveniently made with a Jury. Trials before Assessors must be in such manner and upon such terms as the Court or a Judge shall direct. Any trial before a Referee is to be conducted in the same manner, as nearly as circumstances will admit, as trials before a Judge, but not so as to make the tribunal of the Referee a public Court.

Interlocutory Proceedings and Originating Summonses.—By the New Rules which came into operation on 1st January, 1894, important changes in procedure in these respects in the Queen's Bench Division were made.

New Trials.

A new trial may be ordered on any question in an Action, whatever be the grounds, without interfering with the finding or decision upon any other question.

The usual grounds upon which an application for a new trial is made are: that the Judge who tried the cause misdirected the Jury in point of law; or committed a mistake by admitting evidence which ought not to have been received, or by rejecting evidence which ought to have been admitted. Other grounds for a new trial are, that the damages were excessive; that the verdict was obtained by a surprise; that some of the witnesses for the prevailing party committed perjury; that the verdict was against the weight of evidence; or that there was no evidence to warrant the conclusion come to by the Jury. Indeed, in any case in which it can be made out to the satisfaction of the Court, that justice requires that a new trial should be had, it is in the power of the Court to grant it. And the Courts have power to grant successive new trials of the same Action, and will do so in cases where the justice of the case obviously requires it.

Costs of Actions.

By the Supreme Court of Judicature Act, 1890 (53 & 54 Vict. c. 44), it was provided that, subject to the Judicature Acts, and the rules of court made thereunder, and to the express provisions of any Statute, whether passed before or after the commencement of the Act of 1890, all costs of proceedings

in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or Judge, who shall have full power to determine by whom and to what extent such costs are to be paid (§ 5).

By the County Courts Act, 1888 (51 & 52 Vict. c. 43) it was provided that where a Plaintiff who brings an Action in the High Court of Justice recovers less than £20 in contract or £10 in tort, he shall be deprived of all costs; and where he recovers over £20 but less than £50 in contract, or over £10 but less than £20 in tort, he shall be allowed costs on the County Court scale only, unless otherwise directed by the judge (§ 116).

Appeals.

All appeals to the Court of Appeal must be by way of rehearing, brought on by notice of motion in a summary way. The appellant may appeal from the whole or from any part of any judgment or order. Appeals from any interlocutory or other order must be brought within 14 days, and other appeals within 3 months.

But no appeal may now be brought without leave of the Judge or of the Court of Appeal, on any interlocutory order or judgment of a Judge, except in certain specified cases; and no appeal lies from an order allowing an extension of time for appeal, nor from an order of a Judge giving unconditional leave to defend an action (57 & 58 Vict. c. 16).

An appeal from any judgment, whether final or interlocutory, must be preceded by 14 days' notice; and from any interlocutory order by 4 days' notice.

The Court of Appeal has all the powers and duties, as to amendment and otherwise, of the Court of first instance; also full discretionary power to receive further evidence upon questions of fact; either orally, by affidavit, or by deposition taken before an examiner or commissioner; and such further evidence may be given without special leave, upon interlocutory applications; or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence can only be admitted by special leave of the Court.

In all cases where there is a right of appeal to the High Court, the appeal is to be heard and determined by a Divisional Court, whose determination thereof shall be final, unless leave to appeal is given by that Court or by the Court of Appeal (57 & 58 Vict. c. 16).

Time within which Actions may be brought.

The Statutes of Limitation, which limit the time within which a remedy may be sought for a wrong or injury, protect people against old claims and grievances, by compelling Plaintiffs to bring their Actions whilst the best evidence can be had. Although these enactments take away a Plaintiff's *remedy* after a certain lapse of time, still they do not destroy his *right*. For instance, a Solicitor must *bring any action* for the recovery of costs within 6 years, but he may retain deeds or writings of the client after 6 years have run out until his debt is paid (*a*).

Actions of trespass, detinue, trover, case, assumpsit, and debt (on any lending without a special contract) must be brought within six years; trespass to the person or goods, within four; slander, within two; debt or covenant founded upon deeds under seal or recognizances, within 30; actions on penal statutes when the penalty may go to the party aggrieved, or to the Crown, within two; and when the penalty may go to a common informer, one year.

In all the above cases, if the person entitled to bring the Action be a married woman, an infant (or person under age), or an insane person, the time reckons from the date when those impediments were removed.

Actions to recover compensation to the families of persons accidentally killed through the negligence of others must be brought within 12 months of the death (see *post*, p. 103).

Actions to recover possession of houses or lands must be brought within 12 years of the last payment of rent, or right to make an entry or distress. (37 & 38 Vict. c. 57.)

Actions brought by private individuals against public officials in respect of any alleged default of duty, or for any official act, must be brought within six months, as limited by an Act of 1893 (56 & 57 Vict. c. 61; see *post*, p. 102).

As to foreclosure Actions in case of mortgages, see *post*, p. 437.

The effect of the Statutes of Limitation may, in cases of debt, be avoided by a subsequent acknowledgment of the debt. Therefore, with respect to simple contract debts, if at any time after a debt is due, the debtor renew his promise to pay it, or make such an unqualified acknowledgment of the debt being due that a promise to pay it may be inferred therefrom, he thereby renews his liability from the date of such promise or acknowledgment, and cannot avail himself of the Statutes of Limitation in respect of the preceding lapse of time: but the

(*a*) Smith, Action at Law (14th ed.), 41.

acknowledgment or promise must be in writing, signed by the party chargeable thereby (*a*), or his agent duly authorised (*b*).

Part payment of the debt is in general a sufficient acknowledgment from which a renewed promise to pay the residue may be inferred (*c*). And payment of interest on account of the debt has the same effect as part payment of the debt (*d*). A letter written by the debtor stating, "I cannot pay the debt at present, but I will pay it as soon as I can," is not sufficient to revive the debt without proof of the debtor's ability to pay (*e*).

Formerly the Statutes of Limitation did not apply to actions by a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust (36 & 37 Vict. c. 66, § 25, sub-sect. 2); but the law has now been altered to some extent by the Trustee Act, 1888 (see *post*, under "Trusts and Trustees").

Vexatious Actions Acts, 1896 *and* 1898.

By an Act of 1896 (59 & 60 Vict. c. 51), where the Attorney-General, upon applying to the High Court for an order under the Act, satisfies the Court that any person has habitually and persistently instituted vexatious legal proceedings without reasonable ground, the Court, after hearing such person or giving him an opportunity of being heard (and assigning him counsel if he is unable on account of poverty to retain counsel), is empowered to order that no legal proceedings shall be instituted by such person without leave of the High Court or some judge thereof, and unless he satisfies the Court or judge that such legal proceeding is not an abuse of process.

By an Act of 1898 (61 & 62 Vict. c. 35), similar provisions were enacted in the case of Scotland, power being given to the Lord Advocate to apply to either Division of the Inner House of the Court of Session for an order prohibiting a particular person from institution of an action without leave.

Injunctions.

The main principle on which relief by Injunction is given is, that the mere recovery of damages would not afford satisfactory compensation (*f*); as, for instance, where it is desired

(*a*) 9 Geo. IV. c. 14, § 1.
(*b*) 19 & 20 Vict. c. 97, § 13; *Tanner* v. *Smart*, 6 B. & C., 603; *Sidwell* v. *Mason*, 26 L. J., Ex., 407.
(*c*) *Bodger* v. *Arch*, 24 L. J., Ex., 19. (*d*) *Bamfield* v. *Tupper*, 7 Ex., 27.
(*e*) Re *Bethell*, 34 L. R. C. D., 561.
(*f*) *Wilkins* v. *Aiken*, 17 Ves., 422; *Talbot* v. *Scott*, 27 L. J. Ch., 273.

to restrain a tenant in possession from committing waste, such as felling trees, ploughing up pasture, pulling down buildings; or to prevent repeated litigation (*a*); or to restrain a defendant from continuing a nuisance (*b*), or from using another person's trade mark (*c*). An Injunction is often granted to restrain the discharge of foul water into a stream (*d*).

But the Court will not grant an Injunction where the Plaintiff's case is tainted with fraud or illegality (*e*). Nor will an Injunction be granted to enforce an oppressive contract (*f*); or where the Plaintiff has acquiesced in the act sought to be restrained (*g*); or to restrain the publication of a libel, even when its publication would be injurious to property (*h*). The Court, however, has jurisdiction to restrain the publication of libellous or slanderous statements where they have reference to the conduct of a trade or business, but will only exercise it on clearest evidence that the statements are untrue (*i*).

Where an Injunction is sought to restrain an anticipated injury (*Quia timet* Action), the Plaintiff must show imminent danger of a substantial kind, or that the apprehended injury if it does come, will be irreparable (*k*).

Where a London tradesman had withdrawn from an "early closing" association, and declined any longer to close his shop early on Thursdays, the association issued advertisements calling a meeting, at which a resolution was to be passed "calling on all working men, their wives, and all trade unionists," not to support those persons who did not keep to "early closing" hours, and the tradesman's name was mentioned. Upon his applying to the court, an injunction was granted restraining the persons responsible for the intended meeting from procuring the passing of the proposed resolution, on the ground that a particular combination was intended, with the object of injuring a person in his trade (*l*).

(*a*) *Waters* v. *Taylor*, 2 V. & B., 299.
(*b*) *Hills* v. *Croll*, 1 De G. M. & G., 628.
(*c*) *Farina* v. *Silverlock*, 6 De G. M. & G., 214.
(*d*) *Pennington* v. *Brinsop Hall Coal Co.*, 46 L. J. Ch., 773.
(*e*) *Southey* v. *Sherwood*, 2 Mer., 435; *Pidding* v. *Howe*, 8 Sim., 477.
(*f*) *Talbot* v. *Ford*, 13 Sim., 173; *Kimberley* v. *Jennings*, 36 Sim., 340.
(*g*) *Barrett* v. *Blagrave*, 6 Ves., 104; *Child* v. *Douglas*, 5 De G. M. & G., 739.
(*h*) *Prudential Assurance Co.* v. *Knott*, 10 L. R. Ch. App., 142.
(*i*) *Thorley's Cattle Food Company* v. *Massam*, 14 L. R. Ch. D., 763; *Loog* v. *Benn*, 26 L. R. C. D., 306; *Beall's case*, 20 L. R. C. D., 501.
(*k*) *Fletcher* v. *Bealey*, 28 L. R. Ch. D., 688.
(*l*) In *Salmon* v. *Carter*, by Mr. Justice Henn Collins sitting as Vacation Judge, September, 1891.

SECTION III.—OTHER JUDICIAL TRIBUNALS.

The Judicial Committee of the Privy Council.—This Court has Jurisdiction over all Appeals made to the Queen in Council from the Colonial Courts, the Ecclesiastical Courts, and the Courts of Admiralty.

The *Court of the Lord High Steward* is a Court for the trial of peers indicted for Treason or Felony: in which case the Crown creates a Lord High Steward *pro hâc vice* by Commission under the Great Seal, and the trial takes place before the peers, who give their verdict, not upon oath, but upon their *honour;* and the majority bind the minority (*a*).

Railway and Canal Commissioners.—By the Railway and Canal Traffic Act, 1888, provision was made for the appointment of Commissioners (who now take the place of the former body of Railway Commissioners) to hear and determine all complaints under that Act, and exercise all the jurisdiction conferred thereby on the Courts and Judges empowered to hear and determine such complaints. The Commissioners also hear and determine questions or disputes as to terminal charges, through rates, traffic, and other matters. The powers and duties of the Board of Trade under certain sections of the Railway Clauses Act, 1863, are exercised by the Commissioners.

The *Central Criminal Court* was established for the trial of all offences committed in London and Middlesex, and in certain parts of Essex, Kent, and Surrey. It is the most important Criminal Court in the kingdom. The Lord Mayor of London, the Lord Chancellor, the Judges of the Superior Courts of Common Law, the Dean of Arches, the Aldermen, Recorder, and Common Serjeant of the City of London, the Judges of the Sheriffs' Court of the City of London, and such others as the Crown may appoint, are the Judges of this Court. The sittings are held monthly throughout the year at the Old Bailey. The practice of the Court is assimilated to that of Courts of Assize.

The *Ecclesiastical Courts* are the Archdeacon's Court, the Consistory Court of a Diocese, Arches Court, Court of Peculiars, the Prerogative Courts of the two Archbishops, and the Privy Council, which is the Court of Appeal in Ecclesiastical cases.

The Public Worship Regulation Act of 1874 established a new tribunal for the administration of the laws relating to

(*a*) 4 Black. Comm., 349; Kelynge, 56; Fost., 247. The latest instance of the trial of a peer by the Lords was that of the Earl of Cardigan in 1841, when Lord Denman, C.J., presided as Lord High Steward.

the performance of Divine service according to the use of the Church of England; but the Act is not to be construed so as to affect or repeal any jurisdiction in force at the time of its passing for the due administration of Ecclesiastical law. The Judge who has been appointed is also Judge of the Arches Court. Appeal lies to the Privy Council.

Courts Martial.—Courts Martial are now principally regulated by the Naval Discipline Act, 1866, and by the Army Discipline and Regulation Acts, 1879 and 1881. But inasmuch as the raising and keeping of a standing army within the United Kingdom in time of peace, unless with the consent of Parliament, is illegal, it is expressly enacted by the latter, that those Acts shall not come into force except in pursuance of an annual Act of Parliament. And accordingly by the Army (Annual) Act, which is passed anew every session, the Sovereign is empowered to make articles of war and rules of procedure, and to convene and grant authority to convene Courts Martial, with jurisdiction to try and punish offences according to such articles of war.

Courts of Assize.—These Courts (also called Courts of Oyer and Terminer and Gaol Delivery) have a civil as well as a criminal jurisdiction, and are held in each county twice a year. On the Crown side, the Gaol has to be delivered of all prisoners committed for trial, unless specially committed to Quarter Sessions for an offence triable at such sessions (52 & 53 Vict. c. 19, § 1). On the Civil side, actions at Law are tried at Nisi Prius in the same manner as in the High Court of Justice in London. Winter and Spring Assizes are also held for the trial of prisoners only.

Special Commissions, or special Assizes, are sometimes held for the more speedy trial of any unusual number, or special cases, of prisoners charged with offences affecting the peace and safety of the State—such as treasons, riots, &c.

Courts of Summary Jurisdiction.—These are Courts having power, conferred on them by numerous statutes, to deal with various offences and complaints without the intervention of a jury. Hence the term "Summary." They are empowered to punish offenders whom they adjudge guilty of the offences charged by fine or imprisonment, within the limits defined by the several statutes, and to make orders, as likewise defined by statute, for the payment of money or other purposes in redress of complaints. For the constitution of the Courts, see *post*, p. 98. Each Court has jurisdiction within its own district only. Appeal lies in many cases to Quarter Sessions, or, on a "special case" of law stated by the justices, to a Divisional Court.

SECTION IV.—SOLICITORS.

Admission of Solicitors.

The admission of Solicitors to practise is regulated by the Solicitors Act, 1877 (40 & 41 Vict. c. 25), as amended by the Solicitors Act, 1894 (57 Vict. c. 9). By the last mentioned Act, the Incorporated Law Society were empowered to exempt from the whole or from any part of the "intermediate" examination persons who have obtained the degree of Bachelor of Civil Law or Bachelor of Laws at an university in the United Kingdom.

Solicitors Act, 1888.

By this Act (51 & 52 Vict. c. 65) there was transferred to the Incorporated Law Society, as Registrar of Solicitors, the custody of the Roll of Solicitors heretofore kept by the Clerk of the Petty Bag.

All Articles of Clerkship are now to be registered with the Society; and provision was made by the Act for the enrolment of practitioners and the renewal of their certificates. After 12 months' expiry, certificates are to be in the discretion of the Registrar, subject to appeal.

New provision was also made for hearing any application to strike a Solicitor off the roll.

Solicitor's Duty to his Client.

A Solicitor impliedly undertakes, and is bound to use, skill and diligence in the management of the business in which he is employed by his client. He is liable for the consequences of ignorance or non-observance of the Rules of practice of the Court, and for want of usual and ordinary care in the conduct of a cause. But he is not answerable for error of judgment upon points of new occurrence, or of doubtful construction (*a*). In such cases, if he take the opinion of Counsel and act upon it he will in general be protected: but not if it be upon a point which it is within the Solicitor's province to be master of (*b*).

If a Solicitor instructed to defend an action suffer a judgment to go by default, he will be guilty of gross negligence, and liable in damages to his client; and it will be no answer for him to say that his client had no defence (*c*). And where the negligence or ignorance complained of is very gross, and

(*a*) *Pitt* v. *Yalden*, 4 Burr., 2060; *Lamphier* v. *Phipos*, 8 C. & P., 475.
(*b*) *Godefroy* v. *Dalton*, 6 Bing., 468. (*c*) *Godefroy* v. *Jay*, 7 Bing., 413.

very clearly established by affidavit, the Court will interfere and compel the Solicitor to compensate his client (*a*).

So a Solicitor is guilty of negligence, for which he is liable, if he do not deliver his briefs to Counsel, or procure the attendance of witnesses in due time; and it is no excuse to say the cause was called on out of its turn, or before it might have been reasonably expected (*b*).

A Solicitor is liable to his client for the mistakes or negligence of the agent in the cause (*c*). But the client cannot sue the agent in such case, for there is no privity between them: the client's remedy is against his own Solicitor (*d*), who also has his remedy against the agent.

Lawyers' Letters demanding Payment of Debt and Costs.

When a Solicitor is employed to write to a person and demand payment of a debt, he sometimes adds a demand that the costs of his letter and application be also paid at the same time. But no such costs can be legally demanded unless a writ out of the High Court, or plaint out of the County Court, has been issued. And if the debtor tender the amount of the *debt only* and the Solicitor refuse to accept it unless the costs of the letter, &c., be also paid, and on the debtor refusing to pay such costs the Solicitor issue a writ or plaint, the proceedings will be set aside (*e*) on application to a Judge at Chambers or to a County Court Judge, as the case may be.

Action by Solicitor for his Costs.

If a Solicitor bring an Action for the recovery of his Bill of Costs, he must deliver the Bill, signed by himself or his partner, one calendar month before commencing Action (6 & 7 Vict. c. 73, § 37). But if he have good cause to believe that the client is about to leave England, or to become bankrupt, or to compound with his creditors, or to take other steps to evade payment, he can, by leave of a Judge, obtain permission to sue in less time. (38 & 39 Vict. c. 79.)

Taxation of Solicitor's Bill of Costs.

Any person who has employed a Solicitor may have his Bill of Costs taxed by one of the Masters of the Court; and if on

(*a*) *Dixon* v. *Wilkinson*, 4 De G. & J., 508; *Meggs* v. *Binns*, 2 Bing., N. C. 625.
(*b*) *Hawkins* v. *Harwood*, 4 Ex., 503.
(*c*) *Collins* v. *Griffin*, Barnes, 37.
(*d*) *Ex parte Jones*, 2 Dowl., 161; *Robbin* v. *Fennell*, 11 Q. B., 256.
(*e*) *Holmar* v. *Stevens*, 33 L. T., 148.

such taxation more than one-sixth be disallowed, the Solicitor will have to pay the costs of taxation. And although the Bill has been paid a twelvemonth or more, if the Solicitor's charges were exorbitant, or if the business charged for were unnecessary, or if the Solicitor has exercised undue influence, the Court will, on the application of the client, order the Bill to be taxed (*a*). This application may be made by the client in person, or better still, by another Solicitor, or by Counsel.

Compelling Solicitor to deliver up Deeds, &c.

It is the duty of every Solicitor when required, and after his costs are paid, to deliver up to his client all deeds, papers, moneys, &c., in his hands belonging to such client; and this duty will be summarily enforced by the Court, where documents or money are wrongfully withheld from clients (*b*).

Misconduct of Solicitors, how punished.

The Courts enforce a strict observance of good faith and propriety on the part of Solicitors and other officers under their control; and are always willing to listen to well-founded complaints, as to the conduct of Solicitors, *in their professional character.*

Where, however, a Solicitor is employed in a matter wholly unconnected with professional affairs the Court will not interfere. But where the employment is so connected with his professional character as to afford a presumption that such character formed the ground of his employment by the client, then the Court will exercise its summary jurisdiction; and in cases of gross misconduct will prohibit the Solicitor from practising, or order his name to be struck off the roll (*c*).

Before any application can be made for striking the name of any Solicitor off the roll, or for an order to compel him to answer the matters of an affidavit, fourteen days' notice in writing must be given to the Registrar, with copies of the affidavits intended to be used. (37 & 38 Vict. c. 68, § 7.)

Gifts by a Client to his Solicitor.

Any gift of money or property which may have been made by a client to his Solicitor while the relationship of client and Solicitor existed, is regarded by the Court as voidable; and although a gift so made may be ratified after such relation

(*a*) *Watson* v. *Rodwell*, 47 L. J. Ch., 418.
(*b*) *Ex parte Corp. Christi Coll.*, 6 Taunt., 105; *Rawes* v. *Rawes*, 7 Sim., 624; *Ex parte Cripwell*, 5 Dowl., 689.
(*c*) 1 Chit. Arch. Pract. (14th ed.), 176; *Re Blake*, 30 L. J. Q. B., 32.

has ceased, the Court will require it to be proved, in evidence of ratification, that the donor, when he was a free agent and knew of his power to recall the gift, intentionally determined not to recall it (*a*).

Agreements between Solicitors and Clients.

Under the Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28, §§ 4—15), and the Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44, §§ 8, 9), agreements may be made between solicitors and clients for remuneration for business done in lieu of the ordinary charges.

But the remuneration agreed upon under the Act of 1881 must not be *in addition to* the solicitor's ordinary remuneration. A charge of commission in addition to ordinary charges has been held to be unfair (*b*).

Solicitors' Costs for Conveyancing.

The following authorised scale of costs for conveyancing business is given in the General Order made in pursuance of the Solicitors' Remuneration Act, 1881, taking effect from and after the 31st day of December, 1882.

Deducing and Investigating Title.—Vendor's solicitor for deducing title to freehold, copyhold or leasehold property, and perusing and completing conveyance (including preparation of contract or conditions of sale, if any)—

For the first £1,000	30s. per £100
For the second and third £1,000 . . .	20s. ,,
For the fourth and each subsequent £1,000 up to £10,000	10s. ,,
For each subsequent £1,000, up to £100,000 .	5s. ,,

Purchaser's solicitor for investigating title to freehold, copyhold, or leasehold property, and preparing and completing conveyance (including perusal and completion of contract, if any) same scale as above.

Conveyances in Fee, or for any other Freehold Estate reserving Rent, or Building-leases Reserving Rent.—Vendor's or lessor's solicitor for preparing, settling, and completing conveyance and duplicate, or lease and counterpart—

Amount of Annual Rent.	Amount of Remuneration.
Where it does not exceed £5.	£5.
Where it exceeds £5 and does not exceed £50.	The same payment as on a rent of £5, and also 20 per cent. on the excess beyond £5.

(*a*) *Tyars* v. *Alsop*, 61 L. T. N. S., 8.
(*b*) In re *Montagu Scott* and *Baker*, by North, J., W. N. (1889) 40.

Amount of Annual Rent.	Amount of Remuneration.
Where it exceeds £50 but does not exceed £150	The same payment as on a rent of £50, and 10 per cent. on the excess beyond £50.
Where it exceeds £150	The same payment as on a rent of £150, and 5 per cent. on the excess beyond £150.

Fractions of £5 to be reckoned as £5.

Where a varying rent is payable, the amount of annual rent is to mean the largest amount of annual rent.

Purchaser's or lessee's solicitor for perusing draft and completing, one-half of the amount payable to the vendor's or lessor's solicitor.

Where a solicitor is concerned for both vendor and purchaser, or lessor and lessee, he is to charge the vendor's or lessor's solicitor's charges, and one-half of that of the purchaser's or lessee's solicitor.

Where a conveyance or lease is partly in consideration of a money payment or premium, and partly of a rent, then, in addition to the remuneration hereby prescribed in respect of the rent, there shall be paid a further sum equal to the remuneration on a purchase at a price equal to such money payment or premium.

Unqualified Persons acting as Solicitors.

Unqualified persons acting as Solicitors are liable to penalties, and also for contempt of Court. (6 & 7 Vict. c. 73; 23 & 24 Vict. c. 127, § 26.) Any person falsely pretending to be, or taking or using any name, title, addition, or description, implying that he is, a duly qualified Solicitor, or that he is recognised by law as so qualified, is liable to a penalty not exceeding £10 for each offence (*a*).

Offences of this character may be brought before a Court of Summary Jurisdiction (*a*).

No costs, fee, reward, or disbursement are to be recovered on account of or in relation to any act or proceeding done or taken by any person who acts as a Solicitor without being duly qualified. Thus a Plaintiff who has employed an unqualified person to act as his Solicitor is not, if successful in his action, entitled to any costs, even though the name of a duly qualified Solicitor has been put on the record (*b*).

(*a*) 37 & 38 Vict. c. 68, § 12. (For definition of Courts of Summary Jurisdiction, see *ante*, p. 13.)

(*b*) *Irving* v. *Sanger*, 58 L. J. Q. B., 64.

SECTION V.—TRIAL BY JURY.

Qualifications of Jurymen.

Every man (not being within the exemptions specified hereafter) between the ages of 21 years and 60 years, who has, within the county in which he resides, £10 a year beyond reprises (*i.e.* abatements) in lands and tenements, or in rents issuing out of the same, in fee simple, fee tail, or for life—or £20 a year in leaseholds held for 21 years or longer—or, being a householder, shall be rated to the poor rate, or house duty, in Middlesex, on a value of not less than £30, or in any other county, on a value of £20—or who shall occupy a house containing not less than 15 windows—shall be qualified and liable to serve on Juries in the High Court, and in all Courts of Assize, Nisi Prius, &c., in the county where he resides. These qualifications do not extend to jurors in any liberties, franchises, cities, or boroughs, possessing any jurisdiction civil or criminal.

In the City of London, no man can be returned to try issues joined in the Superior Courts, unless he be a householder or occupier of premises for the purpose of trade within the City, and possess lands, tenements, or personal estate of the value of £100. (6 Geo. IV. c. 50, § 2.)

No man is qualified to serve on a jury, or an inquest, who has been convicted of treason, felony, or any infamous crime, unless pardoned. (33 & 34 Vict. c. 77, § 10.)

Persons qualified and liable to serve as Special Jurors.

By the Juries Act, 1870, every man whose name shall be in the jurors' book for any county, and who shall be legally entitled to be called an esquire, or shall be a person of higher degree, or a banker or merchant, or who shall occupy a private dwelling-house rated or assessed to the poor rate or to the inhabited house duty on a value of not less than £100 in a town containing (according to the census next preceding the preparation of the jury list) 20,000 inhabitants and upwards, or rated or assessed on a value of not less than £50 elsewhere, or who shall occupy premises other than a farm rated or assessed on a value of not less than £100, or a farm rated or assessed on a value of not less than £300, shall be qualified and liable to serve on Special Juries (33 & 34 Vict. c. 77, § 6).

Aliens having been domiciled in England or Wales for 10 years or upwards, if in other respects duly qualified, are liable to serve on juries and inquests as if they had been natural born subjects of the Queen (§ 6).

Summoning of Jurors.

No person can be summoned to serve on any Jury or Inquest (except a Grand Jury) more than once in any one year, unless all the jurors upon the list have been already summoned to serve during such year.

No person is to be exempted from serving as a common juror by reason of his being on any Special Jurors' list, or being qualified to serve as a grand juror.

No person is to be summoned or liable to serve as a Juror in more than one Court on the same day.

No Juror is to be liable to any penalty for non-attendance on any Jury unless the summons served by post requiring him to attend be duly served 6 days at least before the day on which he is required to attend. (33 & 34 Vict. c. 77, §§ 19, 20.)

Where Juror objects to be Sworn.

Before acting on a trial, jurors are required to be sworn by the appointed officers of the court; but if a juror—whether in a civil or criminal proceeding—professes objection from conscientious motives to be sworn, the Judge or other presiding officer, upon being satisfied of the sincerity of such objection, is empowered to permit the juror to make a solemn affirmation or declaration in lieu of an oath (30 & 31 Vict. c. 35, § 8).

[As to a juror desiring to be sworn in the manner customary in Scotland, see *post*, p. 46.]

Restrictions on Jurors at Criminal Trials.

At trials for murder, treason, or treason felony, on an adjournment of the proceedings, jurymen can only be allowed to leave the Court in charge of the sheriff or his officers, who are sworn to keep them together and apart; and this was until recently the law at all trials for felony, but it is now provided by the Juries Detention Act, 1897, that upon the trial of any person for a felony *other than* murder, treason, or treason felony, the Court may, if it see fit, at any time before the jury consider their verdict, permit the jury to separate in the same way as the jury upon a trial for misdemeanor are now permitted to separate. This provision, however, is not to apply to Scotland or Ireland. (60 & 61 Vict. c. 18.)

Remuneration and Refreshments for Jurors.

In strict law, a special juror is to be allowed for his services only such sum as the Judge may think reasonable; but in practice, special jurors receive from the parties in the several

actions by whom the special jury was claimed 21s. a-piece for each cause in which they are sworn.

In the High Court and in the County Courts 1s., and at most assizes 8d., may be claimed by a common juror for each action in which he is sworn—no fee being allowed a juror in any criminal case.

Where a "view" by members of the jury is directed to be held "of the land or premises affected by the action," a special juror sworn in to "take the view" is entitled to 21s. a day, and a common juror to 5s. a day.

Jurors, after having been sworn, may, in the discretion of the Judge, be allowed, at any time before giving their verdict, the use of a fire when out of Court, and reasonable refreshment at their own expense (33 & 34 Vict. c. 77, § 23).

Persons Exempt from serving on Juries (*a*).

Peers, Members of Parliament, judges, clergymen, Roman Catholic priests, ministers of any congregation of Protestant dissenters, and of Jews, whose place of meeting is duly registered, provided they follow no secular occupation unless it be that of a schoolmaster; Serjeants, Barristers-at-law, certificated conveyancers, and special pleaders, if actually practising; members of the Society of Doctors of Law and advocates of the Civil Law, if actually practising; Solicitors, if actually practising, and having taken out their annual certificates, and their managing clerks, and notaries public, in actual practice; officers of the Courts of Law and Equity, and of the Admiralty and Ecclesiastical Courts, including therein the Courts of Probate and Divorce; Clerks of the Peace or their deputies; Coroners; Gaolers and Keepers of Houses of Correction, and all subordinate officers of the same; keepers in public Lunatic Asylums; members and licentiates of the Royal College of Physicians in London, if actually practising; members of the Royal College of Surgeons in London, Edinburgh, and Dublin, if actually practising; apothecaries certificated by the Apothecaries' Company, and all registered medical practitioners and registered pharmaceutical chemists, if actually practising; officers of the Army, Navy, Militia, and Yeomanry, on full pay; members of the Mersey Docks and Harbour Board; the Master, Wardens, and Brethren of the Corporation of Trinity House of Deptford Strond; pilots licensed by the Trinity House of Deptford Strond, Kingston-upon-Hull, or Newcastle-upon-Tyne, masters of vessels in the buoy and light service

(*a*) The exemption given by statute extends to service on coroners' juries: see footnote, p. 52, *post*.

of those corporations, and all pilots licensed under Act of Parliament or charter; the household servants of Her Majesty, her heirs and successors; officers of the Post Office; Commissioners of Customs, and officers, clerks, or other persons acting in the management or collection of the Customs; Commissioners of Inland Revenue, and officers or persons appointed by the Commissioners of Inland Revenue, or employed by them or under their authority or direction in any way relating to the duties of Inland Revenue; Sheriffs' Officers; officers of the rural and Metropolitan Police; Magistrates of the Metropolitan Police Courts, their clerks, ushers, doorkeepers, and messengers; members of the Council of the Municipal Corporation of any Borough, and every Justice of the Peace assigned to keep the peace therein, and the Town Clerk and Treasurer for the time being of every such borough, so far as relates to any Jury summoned to serve in the county where such borough is situate; burgesses of every borough in and for which a separate Court of Quarter Sessions shall be holden, so far as relates to any Jury summoned for the trial of issues joined in any court of General or Quarter Sessions of the Peace in the county wherein such borough is situate; Justices of the Peace, so far as relates to any Jury summoned to serve at any sessions of the peace in their jurisdiction; officers of the Houses of Lords and Commons (33 & 34 Vict. c. 77, § 9).

Revision of Jury Lists.

A list of persons in each parish who are supposed to be qualified to serve as jurors is published annually during the first fortnight in September; and the list is revised by the Justices within the last 7 days of September. Persons wishing to claim exemption must therefore look out for the announcement as to this revision posted upon the church doors.

Threatening or Corrupting Jurors.

To assault, or even threaten, a juryman for anything done by him as a juror is a high misdemeanor and contempt of Court, punishable by fine and imprisonment (*a*).

Bribing or attempting to bribe a juror in order to influence the verdict, is a high misdemeanor; and if a juror receive a bribe he is not only liable to imprisonment, but to a fine, and forfeiture of 10 times the amount of the bribe (*b*).

Embracery is an attempt to influence a jury corruptly by

(*a*) 2 Roll Abr., 76; Tr. per Pais, 269; 1 Chit. Cr. L., 526.
(*b*) Bac. Abr., Juries M., 2; Hawk. P. C., Ch. 2, c. 22, § 19; 1 Chit. Cr. L., 28.

promises, entreaties, money, entertainments, and the like. The punishment for the person embracing, as also for the juror so embraced, is fine and imprisonment. (6 Geo. IV. c. 50, § 61.)

Jurors cannot be punished for their Verdict.

Jurors are not in any way punishable for their verdict; though it be apparently contrary to the evidence, or to the direction of the Judge. The Jury alone are the judges of the facts, and have an absolute power in criminal cases to acquit or convict; and in civil cases to find a verdict for Plaintiff or Defendant (*a*).

Sudden Illness of a Juryman, Prisoner, or Judge.

On the happening of either of these events during the trial. the Jury may be discharged, and the prisoner tried again (*b*).

New Trials in Criminal Cases.

By the law of England no person can be put in peril twice, nor be twice tried or harassed for the same offence. But if the Jury cannot agree upon their verdict, after sufficient deliberation, the Judge has a discretionary power to discharge that Jury and try the prisoner again before another Jury, or he may remand the prisoner to the next assizes or sessions, when he may be tried again; and then not only may further evidence be given against him, but the evidence also of any accomplice, who may have been tried with him at the previous trial (*c*).

If upon the second trial the Jury should not agree within a reasonable time, the Judge, Recorder, or Magistrate, whichever he may be, may discharge them, and again remand the prisoner or prisoners; and so it appears that prisoners may be tried over and over again, and further evidence brought from time to time, until a Jury find a verdict either of acquittal or conviction (*c*). But after a lawful verdict given there cannot be a new trial.

An indictment for obstructing a highway is so far a criminal matter that this rule applies there also (*d*).

Points of Law may be Reserved.

In the event of any difficult matter of law arising on the trial of a prisoner, which the Judge considers of sufficient doubt and importance, he may, if he thinks fit, reserve the point for the opinion of the Court of Criminal Appeal (see *ante*, page 3).

(*a*) Vaugh., 135; 2 Hale, P. C., 213.
(*b*) 2 St. Tr., 832; *R.* v. *Scalbert*, 2 Leach, 706.
(*c*) *Winsor* v. *The Queen*, 7 B. & S., 490; 35 L. J. M. C., 161.
(*d*) *Reg.* v. *Duncan*, L. R., 7 Q. B. D., 198.

SECTION VI.—COUNTY COURTS.

By the County Courts Act, 1867, the jurisdiction of these Courts was considerably extended, and many Actions which formerly could only be tried in a Superior Court may now be tried in a County Court; and as to Actions in which the debts or damages are of small amount, unless commenced and tried in the County Court, the Plaintiff, even if successful, incurs a serious risk in respect of the costs of himself and defendant (see *ante*, p. 7, under title, "Costs of Actions").

In addition to the Act of 1867, many other Acts relating to County Courts were passed at short intervals between 1846 and 1875, and all these statutes were in 1888 consolidated and amended by the County Courts Act, 1888 (51 & 52 Vict. c. 43).

Personal Actions.

All personal Actions, where the debt, demand, or damage claimed is not more than £50, whether on balance of account or otherwise, may be commenced in the Court; but the Court does not have cognizance of any Action for libel or slander, or for seduction, or for breach of promise of marriage. (§ 56.)

The jurisdiction extends to the recovery of any demand, not exceeding £50, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will. (§ 58.)

Actions of Ejectment.

All Actions of ejectment, where neither the value of the lands, tenements, or hereditaments, nor the rent payable in respect thereof, shall exceed £50 by the year, may be brought and prosecuted in the Court of the district in which the lands, &c., are situate. (§ 59.)

What Actions may be stayed.

If in any Action of contract the Plaintiff shall claim a sum exceeding £20, or, if in any Action of tort the Plaintiff shall claim a sum exceeding £10, and the Defendant shall give notice that he objects to the Action being tried in the Court, and shall give security, approved of by the Registrar, for the amount claimed and the costs of trial in the High Court, not

exceeding in the whole £150, and the Judge shall certify that in his opinion some important question of law or fact is likely to arise, all proceedings in the Court in any such Action shall be stayed. (§ 62.)

Where County Court has powers of High Court.

The Court shall have all the powers of the High Court in the actions or matters hereinafter mentioned (§ 67):—

1. By creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law, or next of kin, in which the estate against or for an account or administration of which the demand may be made shall not exceed in value £500:
2. For the execution of trusts in which the trust estate or fund shall not exceed in value £500:
3. For foreclosure or redemption or for enforcing any mortgage, charge, or lien not exceeding £500:
4. For specific performance of or for the reforming, delivering up, or cancelling of any agreement for the sale, purchase, or lease of any property, where the purchase-money, or value of the property, shall not exceed £500:
5. Under the Trustees Relief Acts, or under the Trustee Acts, or under any of such Acts, in which the trust estate shall not exceed in value £500:
6. Relating to the maintenance or advancement of infants in which the property of the infant shall not exceed in value £500:
7. For the dissolution or winding-up of any partnership in which the whole effects of such partnership shall not exceed in value £500:
8. Actions for relief against fraud or mistake in which the damage sustained or the estate or fund in respect of which relief is sought shall not exceed in value £500.

No Action for Beer, &c., consumed on Premises.

No Action shall be maintainable in any Court to recover any debt or sum of money alleged to be due in respect of the sale of any ale, porter, beer, cider, or perry which was consumed on the premises where sold or supplied, or in respect of any money or goods lent or supplied, or of any security given for,

in, or towards the obtaining of any such ale, porter, beer, cider, or perry. (§ 182.)

Trust Moneys may be paid into Court.

Where the amount does not exceed £500, Trustees may pay into a County Court trust moneys or transfer stocks and securities in trust to attend the orders of the Court. (§ 70.)

Fees for Advocacy.

No person other than a Solicitor shall be entitled to have or recover any fee or reward for appearing or acting on behalf of any other party in any proceeding in the Court. (§ 72.)

Procedure by Plaintiffs.

On the application of any person desirous to bring an Action, the Registrar of the Court is to enter in a book a plaint in writing, stating the names and the last known places of abode of the parties, and the substance of the Action intended to be brought. Thereupon a summons, stating the substance of the Action, will be issued under the seal of the Court, and served on the Defendant so many days before the day on which the Action is to be tried, as shall be prescribed. (§ 73.)

Where Proceedings to be Taken.

Except where otherwise provided, every Action may be commenced in the Court within the district of which Defendant shall dwell or carry on his business at the time of commencing the Action; or it may be commenced, by leave, in the Court within the district of which the Defendant or one of the Defendants dwelt or carried on business, at any time within six calendar months next before the time of commencement or, with the like leave, in the Court in the district of which the cause of Action or Claim arose. (§ 74.) But—

(1) Proceedings which relate to the recovery or sale of any mortgage, charge, or lien on lands, tenements, or hereditaments, or to partition, shall be taken in that Court within the district of which the premises are situate:

(2) Proceedings under the Trustee Acts, 1850 and 1852, shall be taken in the Court within the district of which the persons making the application, or any of them, reside:

(3) Proceedings for the administration of the assets of a deceased person shall be taken in the Court within the district of which the deceased person had his

last place of abode in England, or in which the executors or administrators, or any one of them, shall have their or his place of abode:

(4) Proceedings in any partnership case shall be taken in the Court within the district of which the partnership business was or is carried on.

Hearing of Plaint.

On the return day the Plaintiff shall appear, and the Defendant shall be required to appear to answer the plaint; and on answer being made in Court the Judge shall proceed in a summary way to try the Action and give judgment. (§ 79.)

It shall not be lawful for any Plaintiff to divide any cause of Action for the purpose of bringing two or more Actions; but any Plaintiff having cause of Action for more than £50 may abandon the excess, and, on proving his case, recover to an amount not exceeding £50; and the judgment upon such plaint shall be in full discharge of all demands. (§ 81.)

Subject to the Judge's power of amending technical errors in any proceeding, no Defendant shall be allowed to set off or counterclaim any debt or demand claimed by him from the Plaintiff, or to claim and have the benefit of infancy, coverture, or any statute of limitations, or of his discharge under any statute relating to bankrupts or insolvent debtors, without the consent of the Plaintiff, unless the prescribed notice thereof shall have been given to the Registrar. (§ 82.)

Actions for Debt.

In any Action in a Court for a debt or liquidated money demand, the Plaintiff may, at his option, cause to be issued a summons in the ordinary form, or (upon filing an affidavit) a default summons in the prescribed form, and if such last-mentioned summons be issued, it shall be personally served on the Defendant, and if the Defendant shall not, within eight days, give notice, in writing, to the Registrar of his intention to defend, the Plaintiff may, after eight days and within two months from the day of service, upon proof of service, or of an order for leave to proceed as if personal service had been effected, have judgment entered up against the Defendant for the claim and costs. (§ 86.)

Where Parties do not Appear.

If upon the return day the Plaintiff does not appear the Action or matter will be struck out; and if he shall appear,

but shall not make proof of his claim to the satisfaction of the Court, it shall be lawful for the Judge to nonsuit the Plaintiff, or to give judgment for the Defendant; and in either case where the Defendant shall appear and shall not admit the claim, to award to the Defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the Judge shall think just. If the Plaintiff shall not appear when called upon, and the Defendant, or some one duly authorised on his behalf, shall appear, and admit the full amount claimed, and pay the fees payable by the Plaintiff, the Judge may give judgment as if the Plaintiff had appeared. (§ 88.)

In every case where the Plaintiff shall not appear, and the Defendant shall appear either in person or by some person authorised on his behalf, the Court may award to the Defendant by way of costs of attendance and satisfaction for his trouble, such sum as the Court shall think just. (§ 89.)

If in any Action founded on contract a Defendant shall not appear, either in person or by some person authorised on his behalf, and no sufficient excuse for absence be shown, the Registrar may enter up judgment for the Plaintiff and make an order for payment by instalments, or to enter up judgment of nonsuit, or to strike out or adjourn the Action. (§ 90.)

If on the return day the Defendant shall not appear, either in person or by some person duly authorised on his behalf, or sufficiently excuse his absence, or shall neglect to answer, the Judge, upon proof of service, may proceed to the trial or hearing on the part of the Plaintiff only, and the judgment or order thereupon shall be as valid as if both parties had attended. (§ 91.)

Claims before the Registrar.

Where a Defendant admits the claim, the Registrar may settle the terms and conditions upon which it is to be paid, and enter up judgment accordingly. A Registrar may, on the application of the parties and by leave of the Judge, hear and determine any disputed claim where the amount involved does not exceed £2. (§ 92.)

If the person against whom a plaint shall be entered can agree with the Plaintiff upon the amount of the debt in respect of which such plaint shall have been entered, and upon the terms and conditions upon which the same shall be paid, such persons respectively, in the presence of the Registrar or one of his clerks, or in the presence of a solicitor, may sign a statement of the amount of the debt or demand so agreed upon, and of the terms and conditions upon which the same

shall be paid. The Registrar is to receive such statement, and upon proof by affidavit of the signatures, if such statement was not signed in the presence of the Registrar, or one of his clerks, he is to enter up judgment for the Plaintiff for the amount of the debt so agreed on, and upon the terms mentioned in such statement. Such judgment shall be enforceable as a judgment of the Court. (§ 99.)

Trial of Actions with Jury.

Where the amount claimed exceeds £5, the Plaintiff or Defendant may require a jury to be summoned to try the said Action, unless the Action is of the nature of the causes or matters assigned to the Chancery Division. In all Actions where the amount claimed shall not exceed £5, it shall be lawful for the Judge, on the application of either of the parties, to order a jury. The party requiring a jury shall give to the Registrar such notice thereof as shall be prescribed, and pay the sum of 5s. (*a*) for the jury. (§ 101.)

Miscellaneous Provisions.

With the consent of the parties a Judge may order an Action to be settled by arbitration. (§ 104.)

Where a judgment does not exceed £20, the Court may order payment by instalments. In other cases the consent of Plaintiff is necessary to payment being delayed by being made by instalments. (§ 105.)

The Judge may in any case make orders for granting time to the Plaintiff or Defendant to proceed in the prosecution or defence of an Action. (§ 106.)

The Defendant in any Action may pay into Court such sum of money as he shall think a full satisfaction for the demand, together with the costs incurred by the Plaintiff; and if the Plaintiff shall elect to proceed, and shall recover no further sum than that paid into Court, he shall pay to the Defendant the costs incurred after such payment. (§ 107.)

Either party may obtain from the Registrar summonses to witnesses, with or without a clause requiring the production of books, deeds, papers, and writings in the possession or control of the person summoned as a witness. (§ 110.)

Any person present in court at a trial—whether summoned as a witness or not—who refuses to give evidence, or produce documents when required, is liable to a fine of £10. (§ 111.)

(*a*) Five being the number of jurors in County Court cases, the remuneration is thus 1s. for each juror for each case tried.

The Judge may issue a warrant for bringing up a prisoner to give evidence. (§ 112.)

Every Officer of a County Court who shall wilfully and corruptly exact or accept any fee or reward, other than and except such fees as are appointed and allowed, shall, upon proof thereof, be for ever incapable of being employed under the Act, and shall also be liable for damages. (§ 51.)

Appeals.

If any party in any Action or matter be dissatisfied with the determination or direction of the Judge in point of law or equity, or upon the admission or rejection of any evidence, the party aggrieved may appeal to the High Court, subject in certain cases to the leave of the Judge (*a*). (§ 120—132.)

No appeal will lie if, before a decision be given, the parties agree in writing that the Judge's decision shall be final. The agreement need not be stamped, and may be signed by the parties or their solicitors or agents. (§ 123.)

Replevin.

Actions of replevin are to be brought by plaint in the Court of the district where the goods were seized. (§§ 133, 134.)

Recovery of Tenements.

Possession of small tenements may be recovered in the County Court by landlords where the term has expired or been determined by notice (§ 138), or for non-payment of rent (§ 139). A sub-tenant served with summons to recover possession must give notice to his immediate landlord, who may come in and defend. (§ 140.)

Upon issue of a warrant to a Bailiff to give possession of a tenement, no entry on the premises is to be made except between the hours of 9 a.m. and 4 p.m. (§ 142.)

Such warrants are to be in force for 3 months from the day named for delivering possession. (§ 143.)

(*a*) It has been held by a Divisional Court (Dec. 1889) that the terms "action *or matter*" in § 120 allow of an appeal from a County Court Judge's decision on an application for a new trial—thus changing the former practice (before the Act of 1888), and increasing the facilities for appeals from County Courts. (*Dingor* v. *Mathews*, 88 L. T., 139.) But although an appeal to the High Court lies against an order of a County Court Judge granting a new trial, on the ground that his decision is wrong in point of law, no such appeal lies where the order is made solely on the ground that the verdict is against the weight of evidence. (*How* v. *L. and N. W. Railway Company* (1891), 2 Q. B , 496.) And an appeal will lie against a refusal of a County Court Judge to grant a new trial on the ground that his decision was wrong in law. (*Pole* v. *Bright* (1892), 1 Q. B., 603.)

Execution of Process.

Every Bailiff or officer executing any process against the goods and chattels of any person may seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade, to the value of £5), and may also seize and take any money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money. (§ 147.)

The High Bailiff shall hold any such cheques, bills of exchange, promissory notes, specialties, and other securities for money, as a security for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised, for the benefit of the Plaintiff; and the Plaintiff may sue in the name of the Defendant, or in the name of any person in whose name the Defendant might have sued, for the recovery, when due, of the sum or sums secured or made payable thereby. (§ 148.)

An execution after default in paying instalments may issue for whole sum. (§ 149.)

If there shall be cross judgments between the parties, execution shall be taken out by that party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum. (§ 150.)

Sale after Execution.

No sale of any goods taken in execution shall be made until after the end of the 5 days at least next following the day on which such goods shall have been so taken, unless such goods be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and no goods taken in execution shall be sold for the purpose of satisfying the warrant of execution except by brokers or appraisers appointed by the High Bailiff. The brokers or appraisers shall be entitled, out of the produce of the goods so distrained or sold, to 6*d.* in the £ on the value of the goods for the appraisement, over and above the stamp duty, and for advertisements, catalogues, sale and commission, and delivery of the goods, 1*s.* in the £ on the net produce of the sale. (§ 154.)

Landlord's Claim for Rent.

When goods are seized under process of a County Court, the landlord may claim certain rent in arrear, not exceeding the rent of *four weeks* where the tenement is let by the week, the rent of *two terms* where the tenement is let for any other term less than a year, and the rent of *one year* in any other case (§ 160).

SECTION VII.—JUDGMENT DEBTS: AND THE MEANS OF ENFORCING THEM.

After judgment has been pronounced by a Court of competent jurisdiction, there are various means of enforcing the same, *i.e.*, of compelling payment of the debt: as, by execution, by attachment, by sequestration, by charging order, and otherwise; but no person can now be imprisoned for debt except in certain cases to be presently explained.

Judgments obtained for any debt, damages, or costs, in any of the Inferior Courts of England, Scotland, or Ireland, respectively, may now be recovered in any part of the United Kingdom against any of the goods or chattels of the debtor.

A County Court judgment debt does not carry interest under 1 & 2 Vict. c. 110, § 17 (*a*).

Nature and Effect of a Judgment Debt.

All judgments duly registered operate as a charge upon any real estate of the debtor, to which at the time of the entry of the judgment, or at any time afterwards, he may be entitled; or in which he has interest at law or in equity, whether in possession, reversion, remainder, or in expectancy; or over which he has at the time of the entry of the judgment, or may acquire at any time afterwards, any disposing power which he might, without the assent of any other person, exercise for his own benefit (*b*).

No judgment is to affect any land (of whatever tenure) until such land shall have been actually delivered in execution by virtue of a Writ of *Elegit*, or other lawful authority, in pursuance of such judgment (27 & 28 Vict. c. 112, § 1). The registration of a judgment, upon which no writ of execution has been issued, constitutes no lien upon the debtor's land (*c*).

Death of Plaintiff or Defendant after Judgment.

If a Plaintiff die after a *Fieri facias* has been issued, it may still be executed by leave of a Court or a Judge: and so also in the case of a Defendant, execution may be had by such leave upon his goods in the hands of his representatives.

(*a*) *Reg.* v. *Judge of Essex C. C.*, 18 L. R. Q. B. D., 704.

(*b*) 1 & 2 Vict. c. 110, § 13; and see Orders and Rules of the Supreme Court, *passim*.

(*c*) In re *Bailey's Trusts*, 38 L. J., Ch., 237.

Arrest and Imprisonment for Debt.

By the Debtors Act, 1869 (32 & 33 Vict. c. 62, amended by 41 & 42 Vict. c. 54), no person is to be arrested or imprisoned for making default in payment of a sum of money, except—

1. A penalty or sum in the nature of a penalty, other than a penalty under any contract.

2. A sum recoverable summarily on conviction, and not as a civil debt, before a Court of Summary Jurisdiction.

3. Any sum in the possession or control of a trustee or person acting in a fiduciary capacity, and ordered to be paid by a Court of Equity.

4. A sum payable by an attorney in payment of costs, when ordered to pay such for misconduct, or in payment of a sum of money when ordered to pay the same in his character of an officer of the Court making the order.

5. A sum payable for the benefit of creditors of any portion of a salary or other income, in respect of the payment of which any Court having jurisdiction in bankruptcy is authorised to make an order.

6. A sum payable by virtue of an order made under the Act.

No person shall be imprisoned in any case above stated for more than one year.

Power to Imprison Debtors who have Means.

Any debtor may be imprisoned for 6 weeks for non-payment of any debt or instalment of a debt, as to which an order for payment has been made under the Debtors Act, 1869, if it be proved that he had the means to pay but refused or neglected to do so.

The application to commit to prison in such case is by a Judgment Summons, and must be made to a Judge of the High Court of Justice if the amount is above £50. A County Court Judge has no jurisdiction if the amount is over £50.

Imprisonment is not to operate as a satisfaction or extinguishment of the debt; the right to take out execution against the lands, goods, or chattels of the person imprisoned remains as if such imprisonment had not taken place. (32 & 33 Vict. c. 62, § 5.)

Arrest of Absconding Debtors.

Where the Plaintiff in any Action in a Superior Court has good cause of action, to the amount of £50 or upwards, and the Defendant is about to quit England; upon satisfactory proof, &c., to that effect, such Defendant may, by order of a Judge, be arrested and imprisoned for a period not exceeding 6 months, unless he give security for the amount claimed. (32 & 33 Vict. c. 62, § 6.)

If after a debtors' summons has been granted, it appears that the debtor is about to go abroad to avoid payment, or proceedings against him in bankruptcy, he may be arrested. (33 & 34 Vict. c. 76, § 1.)

Writ of Execution, how long in force.

A writ of execution, if unexecuted, remains in force for one year from its issue; but it may be renewed before its expiration by leave of the Court or a Judge for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ.

As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment. Where six years have elapsed since the judgment, or any change has taken place, by death or otherwise, in the parties entitled or liable to execution, the party so entitled may apply to the Court or a Judge for leave to issue execution accordingly.

What may be taken in Execution.

The wearing apparel and bedding of the judgment debtor, or of his family, likewise the tools and implements of his trade, to the value in the whole of £5, are exempt from seizure under any execution. (8 & 9 Vict. c. 127, § 8.)

Things fixed to the freehold cannot be sold under an execution, but corn and other articles of industry may; also straw, chaff, turnips, manure, hay, grasses, roots, vegetables, &c.; but the seizure of these must be under certain restrictions. (56 Geo. III. c. 50.)

Under the writ of *Fieri facias* the sheriff may seize any money or bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, and other securities for money, belonging to the debtor; and is also authorised to sue for the recovery of the sums secured by any such bills, &c. (1 & 2 Vict. c. 110, § 12.)

How Execution may be levied.

In executing a writ the Sheriff may enter the debtor's house, if he find the door open, to search for goods, and may break open inner doors for the same purpose. He may also enter the house of a stranger, if the door be open, and the debtor's goods be there: but if they are not there he is a trespasser. If the goods have been removed to another house or building, for the purpose of avoiding execution, he may break open the outer door, after a demand and refusal to deliver

them. Having seized the goods he must sell them within reasonable time; but before removing them from the premises, the landlord is entitled to a year's rent, if so much is due.

The Queen's taxes due at the time of the seizure, to the amount of one year's arrears, must also be paid before the sale or removal of the goods. (8 Anne, c. 14, § 1.)

If the goods are insufficient to satisfy the debt, a new execution may be issued for the residue; and writs may also be issued concurrently into other counties.

If the Sheriff make return that the debtor is a beneficed clerk, and has no lay fee in the county, the writ *Fieri facias de bonis ecclesiasticis* is issued to the bishop of the diocese; whose duty thereupon is to appoint sequestrators.

A person who retreats to the house of another, or conveys his goods there to prevent lawful execution, is not protected. In such case the Sheriff may break, enter, and distrain, after request made and refusal (*a*).

Although the Sheriff may break the doors of another person's house to execute process of law upon Defendant, or his property, removed thither in order to avoid execution, still he does so at his peril: for if it turn out that the Defendant is not in the house, or has no property there, the Sheriff is a trespasser (*b*); and so he is, in such case, if the door be wide open and he walk in (*b*); but not if the Defendant is staying there on a visit. His right to enter the Defendant's *own house* does not, however, depend on any such contingency. The maxim, "Every man's house is his castle," only extends to his *dwelling*-house. A barn or outhouse not connected with the dwelling-house may be broken open to *levy execution, but not to make a distress for rent* (*a*).

Poundage fees and expenses of the execution may be levied over and above the amount of the judgment.

Charging Stock or Shares with Judgment Debt.

If any person against whom any judgment has been obtained has any government stock, funds, or annuities, or any stock or shares in a public company in England, any Judge may, on application of the judgment creditor, order that such stock, &c., or some part thereof, shall stand charged with the payment of the judgment debt and interest; but no proceedings can be taken to have the benefit of such charge until

(*a*) *Semayne's case*, 1 Smith's L. C. (9th ed.), 115.
(*b*) *Cooke* v. *Birt*, 5 Taunt., 765.

after the expiration of 6 months from the date of such Order. (1 & 2 Vict. c. 110, § 14; 3 & 4 Vict. c. 82.)

Sequestration.

Where any person is by any judgment directed to pay money into Court, or to do any other act in a limited time, and refuses or neglects to do so, the person prosecuting such judgment may by leave of the Court or a Judge issue a Writ of Sequestration against the estate and effects of such person.

A pension payable by the Treasury in respect to past services is liable to sequestration: as in the case of a retired County Court Judge, where it was held that his pension was liable to seizure under writs of sequestration (*a*). And a pension granted to a retired officer of the Court of Queen's Bench has been held liable to sequestration for payment of a wife's costs and arrears of alimony after decree for judicial separation (*b*).

Attachment of Debts.—Foreign Attachment.

A creditor who has obtained a judgment against a defendant and is unable to obtain satisfaction of his judgment, may apply to a Judge for an order that the judgment debtor be examined as to any and what debts are owing to him: and the Judge may order an attachment of any such debts, to answer the judgment debt. But it should be observed that no proceeding can be taken to attach debts till after judgment: and in that respect the process differs from that of "foreign attachment," which is a proceeding available in the Mayor's Court of London, and several other local courts, and by means of which debts may be attached for the purpose of compelling the defendant to appear to the action (*c*).

Garnishee Orders.

A garnishee is a person indebted to a judgment debtor. He may be ordered to show cause before a Master why he should not pay over what is due from him to satisfy the debt.

It is sufficient to sustain a garnishee order if the creditor swear that to the best of his knowledge and belief a debt is owing from the garnishee to his debtor, without specifying a particular form of debt (*d*).

A garnishee order does not create, as between the garnishor

(*a*) *Willcock* v. *Terrell*, 3 Ex. D., 323.
(*b*) *Sansom* v. *Sansom*, 48 L. J., P. & D., 25. (*c*) 1 Wms. Saund., 67.
(*d*) *De Pass* v. *Capital and Industrial Corporation*, C. A. (1891) 1 Q. B., 216; *Vinall* v. *De Pass*, H. L. (1892) A. C., 90.

and garnishee, any debt either at law or in equity, but only gives the former a right to receive the money. And thus a person who has obtained a garnishee order absolute against a company has no *locus standi* as a creditor of the company to present a petition for winding-up, if the company does not obey the order (*a*).

Where a banker had been served with a garnishee order attaching all moneys in his hands belonging to one of his customers, it was held that he was not obliged to honour cheques drawn by the customer against the balance in his hands over and above the amount of the judgment debt, and that his refusal to do so gave the customer no cause of action against him (*b*).

What Debts may be Attached.

Debts due to the debtor in which he is beneficially interested, and for which he can sue in a Court of Law, may be attached: and part of a debt may be attached. Debts due to a corporation; funds in the hands of the official manager of a Joint Stock Company; and money in the hands of a banker may be attached.

On a joint judgment against several, a debt due to any one or more of them may be attached (*c*).

What Debts cannot be Attached.

No debt or money can be attached which the debtor could not have sued for. Money in the hands of the Government cannot be attached unless the agents of the latter have made themselves personally responsible for it; nor unliquidated damages; nor a debt which can only be recovered in a Court of Equity; nor a legacy, unless there has been such an account stated by the executor as would enable the legatee to sue for it; nor dividends payable under a bankruptcy.

The half-pay of officers in the Army or Navy can neither be attached nor assigned; the object of half-pay being to keep the recipient in such a position that his services may be available at any moment for the benefit of his country (*d*).

The wages of a servant, labourer, or workman cannot be attached. (33 & 34 Vict. c. 30, § 1.)

(*a*) In re *Combined Weighing and Advertising Machine Company*, C. A., 43 Ch. D. 99.
(*b*) *Rogers* v. *Whiteley*, H.L. (1892) A.C., 118.
(*c*) *Miller* v. *Mynn*, 28 L.J., Q. B., 324.
(*d*) *Stone* v. *Lidderdale*, 2 Anstr., 533.

SECTION VIII.—MISCELLANEOUS MATTERS CONNECTED WITH PROCEDURE.

Attachment for Misbehaviour and Disobedience to Court.

The High Court has the power of punishing solicitors and other officers of the Court by attachment for misbehaviour in the exercise of their profession. Attachment is a process for bringing the party before the Court, and is granted on motion of Counsel.

So if a person on being served with the process of the Court use contemptuous expressions of such process, or of the Court itself, the Court, upon affidavit of the facts and motion thereon, may grant an attachment against him.

If any person wilfully and contemptuously disobey any rule of court or Judge's order, &c., or abuse the process of the Court, he is punishable for it by attachment: as where execution was sued out without a judgment to warrant it: and if a person forge the process of the Court, or alter or fill it up after it has been sealed; in these and such like cases the Court will punish the offender by attachment. And so also any person who makes use of a fictitious process, falsely pretending that it is the genuine process of the Court.

Contempt of Court.

Where any insult or open defiance is offered in the face of the Court, such is treated as a contempt of court, and punishable at once. In such a case the Judge may order the offender into custody and may sentence him to fine or imprisonment, or both.

Contempt of court may consist either in the more gross violation of decency by making use of contumelious and insolent language in the face of the Court; or in the publishing of reflections on the purity of its proceedings, tending to obstruct the course of justice; or by calumniating the parties concerned in causes before the Court, and in that way prejudicing the minds of the public against suitors and others, before the cause is heard.

Offering to bribe a Judge, or otherwise endeavouring to obtain undue influence, is a high contempt of court.

Contempt of Court by Defaulting Trustees.

In dealing with Trustees or other persons acting in a fiduciary capacity, who have received moneys belonging to others which they have misappropriated or failed to account

for, the Court may treat disobedience to a Judge's order requiring payment of the moneys into Court as a Contempt of Court, punishable by attachment and committal to prison, even though the contempt be purged by payment into Court after issue of attachment.

Habeas Corpus.

This is the most celebrated prerogative writ recognised by the English law. It is founded on *Magna Charta*, but was made more actively remedial by the statute 31 Ch. II. c. 2, as amended by 56 Geo. III. c. 100.

The writ is the great remedy for the violation of personal liberty, and runs in the form of *Habeas corpus ad subjiciendum* ("That you have the body to answer"). It is used for the purpose of liberating the subject from legal confinement. It may, by order of a Judge, be addressed to any person who detains another in custody; commanding him to produce the body of the prisoner, and state the day and cause of his caption and detention, and to do, submit to, and receive whatever the Judge or Court awarding such writ shall consider in that behalf. It is issued out of the High Court of Justice, both in term and vacation, and runs into all parts of the Queen's dominions. The writ is granted on application, by motion to the Court or Judge, supported by an affidavit or facts. If a good or probable ground be shown that the party is imprisoned without just cause, and therefore has a right to be delivered then the writ ought of right to be granted. No person once delivered by *Habeas corpus* can be re-committed for the same offence.

Any prisoner may move for his *Habeas corpus;* and if the Lord Chancellor or Judges deny the same on sight of the warrant or commitment, or oath that a copy of the same is refused, he or they will be each liable to forfeit to the party grieved the sum of £500.

The *Habeas corpus* extends to all cases of unjust imprisonment or restraint of liberty. Any person committed to prison, whether for debt, contempt of court, or other alleged offence (if the commitment is illegal), may apply to a Judge, or to the Court, for a *Habeas corpus* calling upon the Magistrate, Judge, or other person who committed him to show cause why he should not be liberated.

Upon affidavit showing a probable and reasonable ground for complaint of such imprisonment or restraint, any such Judge as aforesaid must award, during vacation time, a writ of *Habeas corpus* under the seal of the Court whereof he is

Judge, directed to the person in whose custody the party is confined; which must be returnable immediately before himself, or any other Judge of the Court; and upon disobedience to the writ, the Judge before whom it is returnable may issue a warrant to arrest the party guilty of such contempt (*a*).

The *Habeas corpus* may also be issued for the purpose of removing any unjust restraint of personal freedom in private life, when imposed by a husband, father, or other person (*b*).

The *Habeas corpus ad testificandum* ("that you have the body to testify") is a writ for ordering a person already in the custody of the law for some other purpose, to be brought into court as a witness. But prisoners in custody under a warrant of commitment or sentence may be brought up by order of the Court. (30 & 31 Vict. c. 35, § 10.)

Mandamus.

The writ of *Mandamus* is a most full and effectual remedy, in the first place, for refusal of admission where a person is entitled to an office or place in a corporation; and, secondly, for wrongful removal from such an office, of which the person removed was legally possessed (*c*).

Generally, the writ may be resorted to on those occasions where the prosecutor has a legal power consequent upon the violation of some legal right or duty, for which the law has not established any specific or adequate legal remedy, and where in justice and good government there ought to be one. It is not applicable as a redress for mere private wrongs.

In its form it is a command issuing in the Queen's name, and directed to any officer, person, or corporation, requiring the performance of some act or duty therein specified, the execution of which the Court has previously determined to be consonant to right and justice. The procedure is frequently resorted to in cases where a Justice of the Peace, upon application made to him, declines to exercise his functions.

The writ is ordinarily obtained on the motion of Counsel supported by affidavits. The party injured (called the "prosecutor") states his alleged right, and that justice is denied him. Thereupon, a "rule *nisi*" is made calling on the Defendant "to show cause" why the *Mandamus* should not issue. When the rule *nisi* is again discussed it may be made *absolute*, if the Court so decides, in which case the *Mandamus* issues.

(*a*) 56 Geo. III. c. 100.
(*b*) 3 Black. Comm., 136.
(*c*) 3 Black. Comm., 264.

SECTION IX.—LAW OF EVIDENCE.

Rules of Evidence.

The general rules of evidence are the same in criminal as in civil proceedings: that which may be received in the one may be received in the other; and that which is rejected in the one is rejected in the other (*a*). But there are some statutory exceptions to the general principle here enunciated.

In all cases the *best evidence* that can be procured must be produced: for if not produced it raises a presumption prejudicial to the party who ought to produce or procure it.

Thus, in the case of written documents, secondary evidence of such is rejected, and primary evidence insisted on as to the contents of all written instruments, by the production of the documents themselves.

The exceptions to the rule are as follows:—(i) where the written document is lost or destroyed; (ii) where it is in the possession of an adverse party who refuses or neglects to produce it; (iii) where it is in the possession of a party who is privileged to withhold it, and who insists on his privilege; (iv) where the production of the document would be, on physical grounds, impossible or highly inconvenient; (v) where the document is of a public nature, and some other mode of proof has been specially substituted for reasons of convenience.

In the above excepted cases, *secondary evidence* of the contents of such documents may be given; but before the secondary evidence can be made admissible, proof must be given that the document once existed; then the loss or destruction of it may be proved, or other evidence given to show why it is out of the power of the party to produce it.

Hearsay evidence is, as a general rule, no evidence. But there are some exceptions. Hearsay is admissible to prove the death of a person beyond sea, and to prove a prescription or custom.

Evidence of Person Charged and of Husband and Wife.

Previously to the Act mentioned under the next heading (p. 42), it was the general rule, in criminal cases, that neither husband nor wife could give evidence for or against each other. There were exceptions, however, to this rule. For instance, when the husband was indicted for personal injury to the wife, and *vice versâ* (*b*); again, upon the indictment of a man for the murder of his wife, her dying declarations were (as now) evidence against him (*c*); and upon an indictment for

(*a*) *Per* Abbott, L.C.J., in *R.* v. *Watson*, 2 Stark., 155.
(*b*) 1 Hale, P. C., 301. (*c*) *R.* v. *Woodcock*, 1 Leach, 500.

bigamy the second wife was a competent witness against the Defendant, the first marriage being previously proved ; for a contract obtained by force has no obligation in law. And in other cases the wife of a person charged with an offence was a competent but not a compellable witness.

It was the rule also that a person charged with a criminal offence could not be called as a witness in his own defence, although he might make, if he chose, an unsworn statement, upon which he could not be cross-examined. A great change in the law has now been made by the Act mentioned below.

Criminal Evidence Act, 1898.

By this enactment (61 & 62 Vict. c. 36) it is now declared that every person charged with an offence, and the wife or husband of the person so charged, shall be a competent witness for the defence "at every stage of the proceedings" (*a*) ; provided, however, (i) that the person charged is not to be called as a witness except on his own application ; (ii) that the failure to give evidence is not to be commented on by counsel for the prosecution; (iii) that the wife or husband is not to be called except on the application of the person charged ; (iv) that the disclosure of communications during marriage is not to be enforced ; (v) that although criminating questions may be asked, any question tending to show commission of an offence other than that charged, or to show bad character, must not (with three qualifications as to special kinds of evidence) be asked ; (vi) that the evidence, unless the Court otherwise orders, is to be given from the witness-box ; and (vii) that the person charged is still to have the power (as heretofore) to make an unsworn statement, on which statement he cannot be cross-examined, whether before committing Justices or at the trial.

Where the person charged is the only witness, he is to be called immediately after the close of the prosecution, and the fact that he has been called as a witness is not of itself to confer upon counsel for the prosecution the right of reply.

The three qualifications of proviso (v) are that a person charged and called as a witness shall not be required to answer

(*a*) The question has been discussed whether this provision enables a person who is charged with an offence to go before the grand jury. Upon a case stated from quarter sessions, the Lord Chief Justice (Lord Russell) and the four other Judges sitting with him laid it down that "the point was unarguable. The Act allowed a prisoner to give evidence for the defence, but the grand jury had nothing to do with the defence. Therefore the prisoner could not claim to go before the grand jury." (*Reg.* v. *Rhodes*, reported in *Times*, Nov. 14, 1898.)

any question tending to show commission of any offence other than that wherewith he is charged, or that he is of bad character, unless (i) the proof that he has committed or been convicted of such other offence is admissible to show that he is guilty of the offence charged; or (ii) he has personally or by his counsel asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or (iii) he has given evidence against any other person charged with the same offence.

The Act, which applies to England and Wales, and also Scotland, but not to Ireland, came into force on October 12, 1898.

Confessions of Guilt.

A free and voluntary confession of guilt which has been made by a prisoner, whether in the course of conversation with private individuals, or under examination before a magistrate, is admissible in evidence as the highest and most satisfactory proof, because it is fairly presumed that no man would make such a confession against himself, if the facts confessed were not true. It is now established that a confession, if duly made, and satisfactorily proved, is sufficient alone to warrant a conviction, without any corroborating evidence (*a*).

But a confession, in order to be admissible, must be free and voluntary: it must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence, because under such circumstances the party may have been influenced to say what is not true, and the supposed confession cannot safely be acted upon (*b*).

Disclosures in Confession to Clergyman.

It appears doubtful how far communications made to a clergyman under the "seal of confession" are privileged. It has been held that a clergyman is bound to disclose any information which, by acting in his professional character, he has confidentially acquired (*c*); but the practice of the Judges has not been uniform on the point. In a reported case (*d*), Chief Justice Best said that "he for one would never compel

(*a*) 3 Russ. Crimes (5th ed.), 440, 441.
(*b*) *Per* Lord Campbell, C. J., *R.* v. *Scott*, D. & B., 47.
(*c*) *Regina* v. *Gilham*, 1 Moo. C.C., 186 (and see a note on the subject in *Law Journal*, Oct. 6, 1894).
(*d*) *Broad* v. *Pitt*, 3 C. & P., 518.

a clergyman to disclose communications made to him by a prisoner, although, if he chose to do so, he would receive them in evidence;" while in another case (*a*), Baron Alderson expressed the opinion that communications made by a prisoner to a clergyman "ought not to be disclosed."

Dying Declarations and Statements.

Upon an indictment for either murder or manslaughter, the dying declarations of the deceased are receivable in evidence, if it appears to the satisfaction of the Judge that the deceased was conscious of his being in a dying state at the time he made them, and was sensible of his awful situation (*b*). But a dying declaration is only admissible where the death of the deceased is the subject of the charge, and the cause and circumstances of the death the subject of the dying declaration. Upon an indictment for using instruments with intent to procure abortion, the dying declaration of the woman was held inadmissible (*c*).

Compelling the Attendance of Witnesses.

If a witness residing within the jurisdiction refuse to attend before a Court of summary jurisdiction to give evidence, he may be summoned; if he refuse to obey the summons, a warrant may issue to bring him up; or if upon evidence on oath it appears probable to the Magistrate that the witness will not obey a summons, he may issue his warrant in the first instance. If the witness refuse to give evidence, or to be sworn, the Magistrate may commit him to prison for any time not exceeding seven days for contempt of court. (11 & 12 Vict. c. 43, § 7).

In a County Court, summonses to persons to attend are issued by the Registrar.

The attendance of witnesses in the High Court is enforced by *Subpœna.*

Payment of Witnesses.

Witnesses subpœnaed to give evidence on the trial of actions must attend at the time and place specified in the *Subpœna;* but they can, if they think fit, object to give their evidence in Court until they are paid the customary amount for their travelling expenses and loss of time (*d*).

Any person, however, present at a trial in a County Court,

(*a*) *Regina* v. *Griffin*, 6 Cox, 219.
(*b*) *R.* v. *John*, 1 East. P. C., 358, 360; *R.* v. *Woodcock*, 1 Leach, 502; *R.* v. *Howell*, 1 Den., C. C., 1.
(*c*) *R.* v. *Hind*, 8 W. R., 421; *R.* v. *Mead*, 2 B. & C., 605.
(*d*) *Newton* v. *Harland*, 1 M. & G., 956.

whether summoned or not, may be required to give evidence under a penalty of £10 (51 & 52 Vict. c. 43, § 111).

A witness may maintain an Action for his expenses against the party on whose behalf he was subpœnaed; and this whether his evidence was given or not (*a*).

When subpœnaed on the part of the Crown, a witness is allowed his travelling and other expenses according to a fixed scale of allowance, "scientific" witnesses being allowed a special fee for their attendance.

Witnesses for Defence of Prisoners.

If witnesses for the defence are called at the inquiry before a Magistrate previous to the committal of a prisoner, and are bound over to give evidence on the trial, their travelling and other expenses may, by order of the Judge at the trial, be allowed by the Crown. (30 & 31 Vict. c. 35, § 5.)

Documentary Evidence.

By this term is meant deeds, writings, letters, papers, &c. If they be in the party's own possession, he must produce them at the trial upon notice requiring him to do so; but if in the possession of his adversary, he must (if he require the use of them) give him notice to produce them; and then, if he fail to do so, secondary evidence may be given of their contents. If they are in the hands of any other person, the attendance of that person, with the documents, can be enforced by *Subpœna duces tecum.* [As to the reception in evidence of unstamped documents produced at a trial, see *post*, p. 180.]

Protection of Witnesses upon Public Inquiries.

In the case of an inquiry held under the authority of a Royal Commission, or by a Committee of either House of Parliament, or pursuant to any statutory authority, every person who attempts to punish, damnify, or injure any person for having given evidence upon such inquiry, shall, unless such evidence was given in bad faith, be guilty of a misdemeanor, and be liable upon conviction to a penalty of £100, or to imprisonment for three months, as well as costs and compensation to the party aggrieved. (55 & 56 Vict. c. 64.)

Oaths and Affirmations of Evidence.

By the Oaths Act, 1888 (51 & 52 Vict. c. 46) general permission to "affirm" instead of taking an oath was established in all cases where objection to the oath is entertained; and it

(*a*) *Hallett* v. *Mears*, 13 East, 15; *Hale* v. *Bates*, 28 L. J. Q. B., 14.

was also provided that the validity of an oath is not to be affected by the deponent's want of religious belief.

The Act provided, further, that if any person to whom an oath is administered desires to swear with uplifted hand, in the form and manner in which an oath is usually administered in Scotland, he is to be permitted so to do, and the oath is to be administered to him in such form and manner without further question.

The person so swearing has to stand, and, holding up his right hand, declare: "I swear by Almighty God, as I shall answer to God at the Great Day of Judgment, that . . . ."

SECTION X.—ACTIONS *IN FORMÂ PAUPERIS.*

Poverty is often supposed to be a serious obstacle to success in a law suit; and many poor persons have felt compelled to submit to deprivation of property and rights, and to relinquish just claims, because they had no money wherewith to employ a lawyer, or to embark in a law suit; being unaware of the facilities afforded to poor persons under such circumstances, ever since the reign of Henry VII., whereby "every poor person who may have cause of action shall have writs according to the nature of his case, without paying for the sealing or writing of the same; and the Justices shall assign him counsel and attorneys, who, together with the officers of the Court, shall act *gratis*." (11 Hen. VII. c. 12; 23 Hen. VIII. c. 15, § 2: and see 46 & 47 Vict. c. 49, §§ 3, 4, 7.)

In whatever position in life a person may be, he (or she) is entitled to sue, or defend, *in formâ pauperis* ("as a pauper"), if without means. But the privilege will not be granted in any vexatious Action, nor where it clearly appears that the applicant has no cause of Action or defence (*a*). And where the question involved concerns an alleged *public right*, and not a personal claim of the Plaintiff, leave to appeal *in formâ pauperis* will not be granted (*b*).

A poor person may be permitted to sue *in formâ pauperis* either at the commencement of an Action or at any subsequent stage of it (*c*). And so also when a new trial is granted (*d*).

(*a*) *Re Cobbett*, 27 L. J. Ex., 199.
(*b*) *Bowie* v. *Marquis of Ailsa*, 13 App. Cas. 371.
(*c*) *Casey* v. *Tomlin*, 7 M. & W., 189; *Doe* d. *Ellis* v. *Owens*, 9 M. & W., 455.
(*d*) *Hall* v. *Ive*, 14 L. J. C. P., 24.

By an Act of 1893 (56 & 57 Vict. c. 22), a check has been put upon frivolous appeals *in formâ pauperis* to the House of Lords, by empowering the House to refuse leave to appeal on a report being made by its Appeal Committee that there is no *primâ facie* case.

Admission to sue in formâ pauperis.

Before an order for admission to sue *in formâ pauperis* can be obtained, a statement of all the facts of the case must be laid before a Barrister for his opinion. If in the opinion of the Barrister the applicant has a good cause of Action, an affidavit will be required that all the material facts, to the best of the applicant's knowledge and belief, are stated in the case. The applicant must also make an affidavit that he is not worth £25, except his wearing apparel and the matter in question in the Action.

The application for the Order may then be made either by motion in court or by petition in writing; the latter is the most usual course. The petition should be to the Lord Chief Justice, or to one of the Judges of the Queen's Bench Division. It should be written on paper, and signed by the applicant; the cause of Action should be stated shortly: the case with Counsel's opinion thereon, and the affidavits before mentioned, should be annexed to the petition, which should conclude by humbly praying to be admitted to sue *in formâ pauperis*, and that Counsel and Solicitor (naming them) may be assigned to him. The petition and affidavit should then be taken to the Judge's clerk, who will lay them before the Judge and obtain the Order. Or it may be taken to Judge's Chambers at the Royal Courts of Justice. Any of the Judges have power to make the Order.

After the Order is obtained the pauper will be at liberty to proceed without paying any fees, either to his Counsel and Solicitor, or at the offices of the Masters and Associates, or at Judge's Chambers, or elsewhere.

The Solicitor for the pauper Plaintiff is bound to render his advice and skill without fee or reward; but that of course does not include money out of pocket (*a*).

The Plaintiff may be dispaupered if it appears during the proceedings that he has no meritorious cause of Action; or if he acts vexatiously or improperly in the conduct of the Action (*b*), or neglects to proceed to trial when he ought (*c*).

(*a*) *Holmes* v. *Penny*, 23 L. J. Ex., 132. (*b*) *Hawes* v. *Johnson*, 1 Y. & J. 10.
(*c*) *Bedwell* v. *Coulstring*, 3 D. & L., 767.

A person admitted to appear as a pauper, if successful after trial with a Jury, is entitled, where no special Order has been made, to such costs on taxation as he has become liable to pay. He will therefore be allowed Solicitor's costs out of pocket, but no Counsel's fees or Solicitor's profits (*a*).

Chancery Suit in formâ pauperis.

A person who requires the assistance of the Chancery Division, but is unable, through poverty, to engage the services of a Solicitor, is entitled to similar privileges.

He must proceed as before mentioned, by laying a statement of the material facts before a Barrister and obtaining his opinion thereon, and by making a similar affidavit as to not being worth more than £25. And the petition must be to the Master of the Rolls, or to one of the Justices of the Chancery Division.

So also a poor person may *defend* an Action in the Chancery Division *in formâ pauperis:* he may, immediately on the statement of claim being filed, and without entering an appearance, present a petition to the Judge before whom the action has been commenced, praying for an Order so to defend, supported by an opinion of Counsel and a similar affidavit to that above mentioned. Neither Court fees nor Counsel's fees will then be payable.

Divorce Suit in formâ pauperis.

Similar facilities are also afforded to poor persons in regard to matters connected with Divorce. But in this, as in the other cases, before either husband or wife will be allowed to proceed *in formâ pauperis*, he or she must lay a case before a Barrister, and obtain his opinion that there is reasonable ground for the proceeding. The case must contain a full and true statement of the facts upon which the applicant seeks the assistance of the Divorce Court, and an affidavit verifying the facts as true.

If, in the Barrister's opinion, the applicant has reasonable grounds for proceeding, the case, with opinion thereon and affidavit, should be sent or delivered to the Registrar of the Probate Division of the High Court, at the Royal Courts of Justice, London: it must be also accompanied by an affidavit of the party applying—if by the husband, as to his income and means of living, and that he is not worth £25, beyond wearing apparel, after payment of just debts;—if by the wife, as to her husband's means, and that she has no separate property worth £25.

(*a*) *Carson* v. *Pickersgill*, 54 L. J. Q. B. D., 484.

SECTION XI.—JUSTICES OF THE PEACE.

Appointment of Justices.

The appointment of Justices of the Peace in counties, as well as in boroughs, is exercised by the Crown, through the Lord Chancellor. The Lord Chancellor also removes Justices from the commission, if through misconduct or other occasion he finds it expedient.

The Justices are to be made within the counties, of the most efficient knights, esquires, and gentlemen of the law, by the advice of the Chancellor and King's Council.

No Sheriff can exercise the office of a Justice of the Peace during the time that he acts as Sheriff.

In counties the Lord Chancellor acts upon the recommendation of the Lord Lieutenant, whose discretion is seldom interfered with, but in boroughs the Lord Chancellor either acts *proprio motu* (which means subject to some suggestions from political partisans) or at the instance of the Town Council.

In a borough having a borough bench of magistrates the Mayor, by virtue of his office, is a Justice for the borough, and continues to be so during the year next after he ceases to be Mayor. (45 & 46 Vict. c. 50, § 155.)

County Justices.

The old property qualification for a Justice of the Peace for any county, riding, or division, was real estate in possession to the value of £100 per annum, over and above what would satisfy and discharge all incumbrances and outgoings affecting the same, or the immediate reversion or remainder of an estate leased for one, two, or three lives of the value of £300 per annum. If any Justice acted without such qualification, he was to forfeit £100. (18 Geo. II. c. 20.)

A qualification by rating was added in 1875. Every person of full age, and who has during the two years immediately preceding his appointment been the occupier of a dwelling-house assessed to the inhabited house duty at the value of not less than £100 within any county, riding, or division in England or Wales, and rated to all rates and taxes in respect thereof, and who is otherwise eligible, is to be deemed qualified to be appointed a Justice of the Peace; but he is not to continue to act after he has ceased, for 12 months, to be such occupier as aforesaid. Penalty for acting without qualification, £100, as above. (38 & 39 Vict. c. 54.)

Neither aliens nor minors are eligible as Justices. Nor can Solicitors be appointed for the counties in which they practise.

Borough Justices.

A Justice of a borough has, with respect to offences committed and matters arising within the borough, the same jurisdiction and authority as a county Justice has with respect to offences, &c., within the county. But a borough Justice cannot act as a justice at any Court of Gaol Delivery or Quarter Sessions, or in making or levying any county or borough rate. (45 & 46 Vict. c. 50, § 158.)

Stipendiary Magistrates.

It being often found difficult in many of the larger towns of England to obtain the services of competent unpaid Justices of the Peace, provision is made by the Stipendiary Magistrates Act, 1863, and other Acts, for the appointment of a paid magistrate. The steps to secure the creation of such an office must be initiated by the Corporation or Local Board as the case may be. His salary will be a charge on the rates. His appointment rests with the Lord Chancellor. (26 & 27 Vict. c. 97 ; 45 & 46 Vict. c. 50, § 161.)

A Stipendiary Magistrate is clothed with the general functions of an ordinary Justice of the Peace, and may do alone acts authorised to be done by two Justices, sitting in fact by himself as a Court of Summary Jurisdiction. (42 & 43 Vict. c. 49, § 20, sub. 10.)

Where Justice Disqualified from Acting.

A Justice of the Peace may not hear or act judicially with other magistrates in any case in which he himself is a party, or has the smallest pecuniary interest, direct or indirect (*a*). Where a Justice of the Peace had taken part in hearing appeals against rating assessments on which orders were made reducing assessments, though he retired from the bench while an appeal was being heard in which he was an appellant, it was held the orders might be brought up to be quashed (*b*).

But the mere possibility of bias in favour of a party appearing before him will not be sufficient to avoid the decision of a magistrate (*c*).

Bankruptcy of Justices.

If a Justice of the Peace be adjudged bankrupt, he will be incapable of acting as a Justice of the Peace until newly assigned by her Majesty in that behalf. (46 & 47 Vict. c. 52, § 32.)

(*a*) Co. Litt., 141 a ; *R.* v. *Justices of Hertfordshire*, 6 Q. B., 753.
(*b*) *R.* v. *Great Yarmouth Justices*, L. R. B. Q. B. D., 525.
(*c*) *R.* v. *Rand*, 35 L. J. M. C., 157.

SECTION XII.—OTHER OFFICIALS CONCERNED IN THE ADMINISTRATION OF THE LAW.

Lord Lieutenants.

The Lord Lieutenant—who is usually a large landed proprietor in the county for which he is appointed, and whose principal duties now remaining are those connected with the nomination of suitable persons to be appointed Justices of the Peace—was originally an officer of considerable military importance at a time when regular armies did not exist in England. Each county which had a Lord Lieutenant was treated as a sort of military district, and this officer was a deputy of the Crown for the purpose of mustering such of the inhabitants of his county as were capable of military service. Consequent on the resettlement of the relations between the Crown and the people with respect to military service, which was one of the results of the dethronement of the Stuarts, the Lord Lieutenants have lost much of their importance and influence, and subsequent events have still further reduced their powers.

Deputy Lieutenants.

These were originally what their name implies, Deputies of the Lord Lieutenant; but the course of events which has deprived Lord Lieutenants of most of their powers has left to the Deputy Lieutenants little else than authority to appear at Court in a handsome uniform.

Sheriffs.

The Sheriff of a County is an officer of great antiquity, and in Norman times was little less than a Viceroy (*a*). Now, he is generally a simple country gentleman, who holds the appointment for a single year, and the duties of whose office are performed usually by or under the direction of an Under-Sheriff—generally a Solicitor of standing. The Sheriff has to receive the Queen's Judges on circuit, to act as returning officer at elections, to summon jurors, to execute civil judgment, and to see to the carrying-out of the sentence of death. Some of these duties entail a heavy responsibility.

Clerks of the Peace.

The Clerk of the Peace of a County is the principal paid executive officer of the County. The appointment was formerly in the gift of the Lord Lieutenant as *Custos Rotulorum*, but it now rests with the standing joint committee of the County Council. It is usually conferred on a Barrister or Solicitor.

(*a*) Maitland, *Justice and Police*, 69.

At sittings of the Justices in Quarter Sessions he is present to perform various duties of a secretarial character, and he has also many duties to attend to out of Sessions—such as the summoning of Juries, the custody of official documents, &c.

Since the establishment of County Councils, the office of Clerk of the Peace is often held with that of Clerk to the County Council.

Coroners.

The office of Coroner is one of great antiquity, the name being derived from the fact that the Coroner is charged with duties which concern the Crown (*corona*). In recent years, the law respecting the office has been consolidated and amended by the Coroners Acts, 1887 and 1892 (50 & 51 Vict. c. 71; 55 & 56 Vict. c. 56).

Every Coroner, whether for a county or a borough, is to appoint, by writing under his hand, a fit person to be his deputy, who may act for him during his illness or absence for any lawful or reasonable cause. (55 & 56 Vict. c. 56, § 1.)

Where a Coroner is informed that a dead body is lying within his jurisdiction, and there is reasonable cause to suspect that such person has died either a violent or an unnatural death, or has died a sudden death of which the cause is unknown, or that such person has died in prison, or in such place or under such circumstances as to require an inquest, the Coroner shall, as soon as practicable, issue his warrant for summoning not less than 12 nor more than 23 "good and lawful men" (*a*) as jurors. (50 & 51 Vict. c. 71, § 3.)

An inquest being a public inquiry, any person has *primâ facie* a right to attend, but the control of the proceedings is in the discretion of the Coroner; and in a well-known case it was held that a person who has no interest in the inquest may be expelled the room by the Coroner (*b*).

The Acts expressly provide that the Coroner and Jury shall view the body, and that the Coroner shall examine on oath all persons who tender evidence respecting the facts, and all persons

(*a*) The qualification for jurymen at coroners' inquests is thus left very wide, and would seem to vary in different localities according to custom. There appears also to be no limit of age, as in the case of special and common jurors (*ante*, p. 19). Although the exemption is in practice (it is believed) often disregarded, it has been judicially decided that the exemption from service on juries conferred by statute (see *ante*, p. 21) extends to service on coroners' juries (*B.* v. *Dutton*, Div. Ct. (1892) 1 Q.B. 486).

(*b*) *Garnett* v. *Ferrand*, 6 B. & C., 611.

having knowledge of the facts whom he thinks it expedient to examine.

In a case of murder or manslaughter the Coroner is to put into writing the statement on oath of those who know the facts, or so much thereof as is material, and any such deposition shall be signed by the witness and also by the Coroner.

After viewing the body and hearing the evidence the jury shall give their verdict, setting forth, so far as such particulars have been proved, who the deceased was, and how, when, and where the deceased came by his death, and if he came by his death by murder or manslaughter, the persons, if any, whom the Jury find to have been guilty of such murder or manslaughter, or of being accessories.

They shall also find the particulars required by the Registration Acts to be registered concerning the death (see *post*, under "Burial of the Dead").

In case 12 at least of the jury do not agree on a verdict, the Coroner may adjourn the inquest to the next sessions of oyer and terminer or gaol delivery for the county or place, and if after the Jury have heard the charge of the Judge holding such sessions, 12 of them fail to agree on a verdict, the jury may be discharged. (50 & 51 Vict. c. 17, § 4.)

Where a Coroner's inquisition charges a person with the offence of murder or of manslaughter, the Coroner shall issue his warrant for arresting or detaining such person, and shall bind all such persons examined before him as know or declare anything material to appear at the next court of oyer and terminer or gaol delivery, then to give evidence. Where the offence is manslaughter, the Coroner may, if he thinks fit, accept bail for the person charged (§ 5).

Where the High Court, upon application by the Attorney-General, is satisfied either (i) that a Coroner refuses or neglects to hold an inquest which ought to be held; or (ii) after an inquest has been held by a Coroner, that by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, or otherwise, it is necessary or desirable that another inquest should be held, the Court may order an inquest to be held, and may order the said Coroner to pay the costs of the application (§ 6).

That Coroner only, within whose jurisdiction the body of a person upon whose death an inquest ought to be held is lying, shall hold the inquest; and where a body is found in the sea, where there is no deputy Coroner for the jurisdiction of the Admiralty, the inquest shall be held only by the Coroner in the place where the body is first brought to land (§ 7).

A Coroner shall not by himself or partner, directly or indirectly, act as Solicitor, in the prosecution or defence of a person for an offence for which such person is charged by an inquisition taken before him as Coroner. If he so acts he shall be deemed guilty of misbehaviour. And the Court before whom such person is tried may impose a fine not exceeding £50 (§ 10).

A Coroner, upon holding an inquest, may, if he thinks fit after view of the body, authorise the body to be buried before verdict and before registry of death; but, except upon holding an inquest, no order or warrant for the burial of a body can be given by the Coroner (§ 18).

Where a person duly summoned as a Juror does not, after being openly called three times, appear, or appearing, refuses without reasonable excuse to serve, the Coroner may fine him not exceeding £5.

Where a person duly summoned to give evidence does not, after being openly called three times, appear, or appearing, refuses without lawful excuse to answer a question put to him, the Coroner may fine him not exceeding 40s. (§ 19).

Where it appears to the Coroner that the deceased was attended at his death or during his last illness by a qualified medical practitioner, the Coroner may summon such practitioner as a witness; but if it appears to the Coroner that the deceased person was not attended at his death or during his last illness by a qualified medical practitioner, the Coroner may summon any qualified medical practitioner in actual practice in or near the place where the death happened, and any such medical witness may be asked to give evidence as to how the deceased came to his death.

If a majority of the Jury are of opinion that the cause of death has not been satisfactorily explained by the medical or other evidence brought before them, they may require the Coroner to summon some other legally qualified medical practitioner named by them, and to direct a post-mortem examination to be made by such practitioner (§ 21).

A qualified medical practitioner, who has attended at a Coroner's inquest in obedience to a summons, is entitled, for attending to give evidence at an inquest whereat no *post-mortem* examination has been made by him, to receive as remuneration one guinea; and for making a *post-mortem* examination by direction of the Coroner, with or without an analysis of the contents of the stomach or intestines, and for attending to give evidence thereon, two guineas (§ 22).

SECTION XIII.—CONSTABLES.

Police in Counties, Cities, and Boroughs.

Though the modern police constable inherits the name of "constable" from a very ancient original (*comes stabuli*, chief of the imperial stables: "police" being from πόλις, a city), yet his status and functions are of comparatively recent origin, the first "police" force being the Metropolitan police, created by Sir Robert Peel's Act of 1829 (10 Geo. IV. c. 44). In 1839 power was conferred on Justices of the Peace for counties to institute at their option police for counties somewhat on the metropolitan model (2 & 3 Vict. c. 93); and the Act was afterwards made compulsory for the whole of England (19 & 20 Vict. c. 69). In boroughs a police force was first established by the Municipal Corporations Act of 1835 (5 & 6 Will. IV. c. 50), the police provisions of which Act still subsist in the Act which has taken its place (45 & 46 Vict. c. 50).

Powers and Duties of Constables.

The conditions under which accused or suspected persons may be taken into custody and detained are easily defined.

As to felonies (*a*), all persons who are present and see a felony committed, or attempted to be committed, are bound to apprehend the offender. Silently to observe the commission of a felony, without using any endeavours to apprehend the offender, is a misprision of felony (*b*).

For felony the law gives extensive, and for treason still more extensive, powers of arrest without warrant both to private individuals and to constables. A private individual may justify an arrest for felony without warrant if he can show either that a felony was in fact committed by the party arrested, or that a felony was committed by some one, and that he had probable cause from his own observation, or from the credible information of another, to suspect the person arrested of being the felon (*c*). If these facts can be established, the arrest in order to bring the accused or suspected person before a magistrate, and his detention until the question of his guilt or innocence is decided, are lawful, even though in the result he should be found not guilty (*d*).

(*a*) As to the distinction between felonies and misdemeanors, see p. 59.
(*b*) 1 Hawk. P. C., c. 59, § 2; 1 Chit. Cr. L., 16.
(*c*) *Beckwith* v. *Philby*, 7 B. & C., 635; 1 Chit. Cr. L., 12 *et seq.*
(*d*) 1 Chit. Cr. L., 14, 20; 1 Russ. Crimes, 801 *et seq.* (4th ed.)

Powers of Constables and of Private Individuals.

As a constable must constantly act on the charge and information of others in arresting criminals who might escape altogether unless promptly captured, so he has a larger authority and protection than a private individual, and is justified in arresting, and indeed bound by law, under pain of indictment, to arrest any person whom he has reasonable and probable cause to suspect, even from the information of another, of having committed a felony. But a constable cannot legally arrest a person on a charge of felony made by another, if the charge rests on no reasonable ground, or on grounds which are unreasonable (*a*).

So that there is a distinction between the power of a private individual and that of a constable to arrest a person *on suspicion* of having committed a felony. In order to justify a private person in so doing, he must not only prove that he had a reasonable ground of suspicion, but he must also be able to prove that a felony has actually been committed; whereas a constable having reasonable ground to suspect a person of having committed a felony may detain the party suspected until inquiries can be made by the proper authorities (*b*).

Arrest with and without a Warrant.

In cases of treason every subject of the Crown is justified in arresting and detaining for trial, without warrant, a person against whom there is a charge of treason wheresoever committed, and wheresoever he may be found within the United Kingdom.

No person, whether constable or not, is justified, without a warrant, in arresting a person for a *misdemeanor* after it is over; but any one may arrest persons committing a breach of the peace in their presence, and whilst there is danger of renewal; but not after the breach and danger of renewal have ceased (*c*).

In cases of affray, the principle is that for the sake of the preservation of the public peace, any person, whether a constable or not, who sees it broken may restrain the liberty of him whom he sees breaking it, so long as his conduct shows that the public peace is likely to be endangered by his acts; therefore any private person may take another into custody

(*a*) *Hogg* v. *Ward*, 27 L. J. Ex., 443.
(*b*) *Beckwith* v. *Philby*, 6 B. & C., 635; 1 Chit. Cr. L., 12 *et seq.*
(*c*) *Hollyday* v. *Oxenbridge*. Cro. Car., 324; *Fox* v. *Gaunt*, 3 B. & Adol. 798; *Baynes* v. *Brewster*, 2 Q. B., 375.

who commits a breach of the peace in his presence, or he may give such person in charge to a constable (*a*).

A constable is not justified in taking parties into custody who are merely insulting each other in his presence. But if he sees blows struck, or threats of personal violence, he may. A constable must not strike a blow, except in self-defence.

After an affray is over, no person can be arrested without a warrant; unless a dangerous wound has been inflicted, or there be ground for supposing the affray will be renewed (*b*).

On a complaint being made to a constable that a felony has been committed, or a dangerous wound inflicted, he is bound to take the offender into custody, or to receive him from others who have taken him.

A person who has committed a felony may, by the common law, be apprehended in any part of Her Majesty's dominions; and a Justice of the Peace may issue his warrant to apprehend a felon who is in his county, for felony committed in another county (*c*). A prisoner may be apprehended in Scotland for a felony committed in Ireland, brought to England, and sent to Ireland to be tried (*d*). A person may be apprehended in England for a felony committed in Ireland, and sent thither to be tried (*e*). A person arrested in England for a murder committed in a colony, may be sent thither to be tried (*f*). If a felony be committed out of the Queen's dominions, whether on sea or land, the felon may be apprehended in England (*g*).

It is the duty of every person arresting another to take him before a Justice as soon as he reasonably can; and the law gives no authority, even to a Justice, to detain a person suspected, except for a reasonable time till he may be examined (*h*).

A constable may break open doors to execute a warrant, but not until after he has declared his business, and demanded admission, and allowed a reasonable time for the opening.

If a constable, having arrested a person in execution of a warrant, suffer him to go at large on his promising to return and bring sureties, he cannot retake him under the same warrant; but if he surrender himself the constable may detain

(*a*) *Timothy* v. *Simpson*, 5 Tyr., 244; *Ingle* v. *Bell*, 1 M. & W., 516; *Webster* v. *Watts*, 11 Q. B., 311.
(*b*) *Reg.* v. *Walker*, 23 L. J. M. C., 123.
(*c*) 1 Hale, P. C., 580.
(*d*) *Col. Lundy's Case*, 2 Ventr., 314.
(*e*) *R.* v. *Kimberley*, 2 Str., 848.
(*f*) *Col. Lundy's Case*, 2 Ventr., 314.
(*g*) *Rex* v. *Hutchinson*, 3 Keb., 785; *R.* v. *Mailman*, Park, 241.
(*h*) *Wright* v. *Court*, 4 B. & C., 59.

him (*a*). If a constable allow a prisoner to escape from his custody, he is guilty of a misdemeanor.

A warrant may be issued against an offender by description of his person, or dress, or both.

The want of a valid warrant in the case of a person charged with felony will not justify resistance, nor in case of a prisoner killing the officer having charge of him, will it reduce the offence of killing from murder to manslaughter. Where a person is apprehended upon probable suspicion of treason, treason-felony, or felony, though there be no warrant, and even though he be in fact innocent, he is not justified in resisting; he must submit to be taken into custody, and to an investigation before a magistrate; and if committed, to the trial and judgment of the law. If in order to prevent being taken into custody, or to escape from such custody, he injure the constable or other officer, knowing him to be such, he will be guilty of an aggravated assault; and if he kill him he will be guilty of murder (*b*).

When a police constable arrests a man on a given charge he ought not to ask the prisoner any questions, yet he should keep his ears open and listen to anything the prisoner says. It is *not* his duty to tell the prisoner not to speak (*c*).

Assaults on the Police.

Any person assaulting a constable in the execution of his duty will be liable to a penalty not exceeding £20, or to six months' imprisonment, with or without hard labour. If he has already been convicted of a similar offence within two years, the punishment may be imprisonment for nine months, with or without hard labour. (34 & 35 Vict. c. 112, § 12.)

Special Constables.

Special constables are appointed on occasions of unusual disturbance of the public peace by mobs and tumultuous assemblages; or alarm as to the public safety; and to prevent anticipated riots, felonies, or destruction of property. They may be appointed in all cases where it appears to two or more Justices, upon the oath of credible witness, that tumult, riot, or felony has taken place, or may be reasonably apprehended, if such Justices should be of opinion that the ordinary officers appointed for preserving the peace are not sufficient for the protection of person and property. (1 & 2 Will. IV. c. 41, § 1).

(*a*) 1 Chit. Cr. L., 61; 2 Hawk., c. 14, § 19.
(*b*) 1 Russ. on Cr. (5th ed.), 723 *et seq.*; *Rex* v. *Woolmer*, R. & M., 334.
(*c*) *Per* Hawkins, J., at assizes at Lewes, August 9, 1887.

PART II.

CRIMINAL LAW.

SECTION I.—TREASONS, FELONIES, AND MISDEMEANORS.

Distinction between Felonies and Misdemeanors.

A FELONY is a crime of a deeper dye or more atrocious nature than a misdemeanor: murders, burglaries, arsons, robberies, forgeries, and such like are felonies. A misdemeanor is a species of crime or offence less than a felony: perjuries, libels, assaults, frauds, and such like are misdemeanors.

Treason.

Treason (or high treason) is the highest crime known to the law. The following are the only offences (*a*) now deemed to be high treason, viz.:—

(1) Forming or displaying by any overt act, or by publishing or printing, or writing, an intention to kill or destroy the Queen, or to do her any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint;

(2) The same against the wife of a King regnant;

(3) The same against that son of a King or Queen regnant, who is for the time being heir apparent;

(4) Violating the wife of a King regnant; or that daughter of the King or Queen regnant who at the time is his or her eldest daughter if unmarried; or the wife of that son of a King or Queen regnant who for the time being is the heir apparent;

(5) Levying war against the Queen in any of her dominions;

(6) Assisting a public enemy at war with the Queen;

(7) Slaying the Chancellor, Treasurer, or King's Judges, being in their places doing their offices.

(*a*) Stephen, Dig. Crim. Law.

A person accused of treason must be prosecuted within three years of its commission, if the offence be committed within the realm; except in the case of a designed assassination of the sovereign. The crime is punishable with death.

Akin to treason, and so punishable with death, is the crime of wilfully and maliciously setting on fire any of Her Majesty's ships of war, dockyards, or naval or military stores; but the Judge may direct sentence of death to be recorded only (*a*).

Punishment of Traitors.

Up to a few years ago—until as recently as 1870—the punishment of a convicted traitor was that he be drawn on a hurdle to the place of execution; be hanged by the neck until dead; and that his head be then severed from his body, and his body divided into four quarters. Of these details the hanging now only remains. (33 & 34 Vict. c. 23, § 31.)

Treason-Felony.

Certain offences which used to be treasons are felonies; and hence the term "treason-felony." If any person, within the United Kingdom or without, compass, imagine, invent, devise, or intend to deprive or depose the Queen, her heirs or successors, from the style, honour, or Royal name of the Imperial Crown of the United Kingdom or other her dominions, or to levy war in any part of the United Kingdom, in order by force or constraint to compel her or them to change her or their measures or councils, or in order to put any force or constraint upon, or to intimidate or overcome either House of Parliament, or to move or stir any foreigner to invade with force any of her Majesty's dominions, and express, utter, or declare such intention, &c., by publishing any printing or writing, or by open and advised speaking, or by any overt act or deed; every such person shall be guilty of felony, and liable to penal servitude for life, or for any term not less than 7 years, or to be imprisoned with or without hard labour for any term not exceeding 2 years. (11 & 12 Vict. c. 12, § 3.)

In treason-felony, every principal in the second degree, and every accessory before the fact, is punishable in the same manner as the principal in the first degree; and every accessory after the fact is liable to imprisonment with hard labour, for any term not exceeding 2 years. (11 & 12 Vict. c. 12, § 8.)

Murder or Homicide.

Murder is thus defined by Sir E. Coke: "When a person of sound memory and discretion unlawfully killeth any reason-

(*a*) Stephen, Dig. Crim. Law.

able creature in being, and under the King's peace, with malice aforethought, either express or implied" (*a*).

Homicide is defined as the killing of a human being; and it matters but little by what means the death was effected, whether by poisoning, shooting, stabbing, cutting or wounding, and whether with a deadly weapon or with a stick or fists, or by drowning, suffocating, strangling, burning, scalding, or otherwise; for if a man do a thing deliberately, which is calculated to endanger the life of another, and it causes his death, he will be guilty of homicide (*b*).

If two or more combine to do an unlawful act against the Queen's peace, of which the probable consequence might be bloodshed, and *one* of them kill a man, it is *murder in them all*, because of the *malitia præcogitata*, or evil intended beforehand (*c*).

Homicide is of three kinds—justifiable, excusable, and felonious. The first has no share of guilt at all; the second very little; but the third is the highest crime against the law of nature that man is capable of committing (*d*).

Justifiable homicide is of divers kinds. Where a crime in itself capital is endeavoured to be committed by force, it is lawful to repel that force by the death of the party attempting the crime. The law justifies a woman killing a man who attempts to ravish her; and so, too, the husband or father may be justified killing a man who attempts a rape upon his wife or daughter; but not if he take them in adultery *by consent;* for the one is forcible and felonious, but not the other (*e*).

Excusable homicide imports some error, fault, or omission; so trivial, however, that the law excuses it from the guilt of felony, though in strictness it judges it deserving some little degree of punishment. Excusable homicide is of two sorts, either (i) where a man, doing a lawful act, unintentionally kills another, by misadventure; or (ii) in self-defence (*f*).

Chance-medley is killing in self-defence upon a sudden rencounter, and is excusable homicide, *se defendendo* (*g*). To excuse homicide it must appear that the slayer had no other possible (or at least probable) means of escaping from his assailant. The distinction between homicide upon chance-medley and manslaughter may be thus stated:—When both

(*a*) Coke, 3 Inst. 47; 4 Black. Comm., 195.
(*b*) 4 Black. Comm., 196; Fost. 132; 1 Hawk., P. C., c. 31.
(*c*) 1 Hawk., P. C., 74; 4 Black. Comm., 200.
(*d*) 4 Black. Comm., 177.
(*e*) 4 Black. Comm., 181; 1 Hawk. P. C., 71; 1 Hale, P. C., 48, 486.
(*f*) 4 Black. Comm., 183. (*g*) 4 Black. Comm., 184.

parties are actually combating at the time when the mortal stroke is given, the slayer is then guilty of manslaughter; but if the slayer had not begun to fight or (having begun) endeavours to decline further struggle, and afterwards, being closely pressed by his antagonist, kills him to avoid his own destruction, this is *homicide excusable by self-defence* (*a*).

Felonious homicide, or wilful murder, is the killing of a human creature of any age or sex, without justification or excuse. This may be done either by killing one's self, or another person. If a man persuade another to kill himself and he do so, it is *murder* in both. To constitute a *felo de se*, the suicide must be of years of discretion and in his right senses.

Manslaughter is the unlawful killing of another without malice, express or implied (*b*). It may be either voluntary or involuntary—it must be done without premeditation. If there be sufficient time for passion to subside and reason to interpose, and the person so provoked afterwards kill the other, it is deliberate revenge, and amounts to murder (*c*).

As to malpractices in surgery, resulting in death—for which conviction for manslaughter is not uncommon—see *post*, p. 86.

Duels and Challenges.

Killing a person in a duel is murder, under any circumstances; for it is deliberately undertaken with deadly weapons, and the killing is deemed premeditated. And it is deemed murder in the seconds as well as in the principals: and even the second of the party killed may be indicted and convicted of murder, as being present aiding and abetting (*d*).

(*a*) Fost. Cr. L., 277.

(*b*) In charging the grand jury at the Leicestershire assizes with reference to an indictment against *Henry Moore* for the manslaughter of one Briggs by "charging" him at football, Mr. Justice Hawkins thus laid down the law as to what constitutes manslaughter in football-playing: "The rules of any football association had (he said) nothing to do with the case, as no rule of any society or association could override the common law of the land. If the rules of the association provided that one man was entitled to knock down another, and if he did so with so much violence as to cause death, it would still be manslaughter. Even, therefore, if the rules allowed one man to jump on another and death was thereby caused, he would still be liable to be charged with manslaughter. The only question here was whether the fatal injuries had been caused by misadventure, or by the violence, recklessness, or gross negligence of the defendant." The grand jury in this case having returned a true bill, the accused was tried and convicted. (Reported in *Law Journal* of Feb. 19, 1898: and see also *Regina* v. *Bradshaw* (1878), 14 Cox Cr. Cas. 83.)

(*c*) 1 Black. Comm., 190, 191.

(*d*) 1 Hawk. P. C., c. 31, §§ 21, 31; Fost., 297; 1 Hale, P. C., 453, 441; *R.* v. *Cuddy*, 1 Car. & K., 210.

Sending a challenge, either by word or letter, to a person to fight a duel is a misdemeanor punishable with fine or imprisonment, or both. The provocation, however great, is no excuse or justification for sending the challenge; though it may mitigate the punishment. To be the bearer of such a challenge is also a misdemeanor (*a*).

Provoking a man to send a challenge, by violent and malicious language with intent to incite another to challenge him to fight a duel, is also an indictable offence, punishable as above; and challenging to fight with the fists, or otherwise, is also a misdemeanor (*b*).

Prize-fighting, boxing-matches, and wrestling are unlawful, and if death ensue it is manslaughter, not only in the person who kills, but also in the seconds, and in all those who by their presence encourage the contest (*c*).

Riots and Rioters.

A riot is the riotous assembling of three or more persons accompanied with circumstances of actual force or violence, or of an apparent tendency thereto, calculated to inspire people with terror (*d*); such as being armed, using threats, and such like; and it is sufficient terror and alarm if *any one* of Her Majesty's subjects be terrified (*e*).

The riotous assembling of 12 persons or more, to the disturbance of the peace, is a misdemeanor; and if they do not disperse within one hour after the reading of the proclamation in the Riot Act, by a Justice of the Peace, Sheriff, Under-Sheriff, or Mayor, the offence is felony. And if the mob disobey the orders of the Magistrate, or oppose by force the reading of the Queen's proclamation, the offence is felony (*f*). Also if any of the mob demolish, or begin to demolish, or burn any church, chapel, meeting-house, dwelling-house or other building, or any machinery in any factory or mine, such persons will be guilty of felony (*g*).

Where any riot or tumult happens, or is expected to happen, Justices may order every person licensed to sell intoxicating liquors in or near the place, to close his premises for a time. (35 & 36 Vict. c. 94, § 23.)

(*a*) 1 Hawk. P. C., c. 63, § 3; *R.* v. *Phillips*, 6 East, 464.
(*b*) *R.* v. *Phillips*, 6 East, 464; *R.* v. *Rice*, 3 East, 581.
(*c*) East, P. C., 270; *R.* v. *Murphy*, 6 Car. & P., 103.
(*d*) Arch. Crim. Pl. & Evid. (20th ed.), 956: *R.* v. *Hughes*, 4 C. & P., 372; and see *Drake* v. *Foottit*, [1881] 50 L. J. M. C., 141.
(*e*) *R.* v. *Phillips*, 2 Moo., C. C., 252.
(*f*) 1 Geo. I. st. 2, c. 5.
(*g*) 7 Wm. IV. & 1 Vict. c. 91, § 1; 9 & 10 Vict. c. 21, § 1; 24 & 25 Vict. c. 37, §§ 11, 12.

For damage done by rioters the party injured may make a claim to the County Council for compensation out of the county police rate under the Riot (Damages) Act, 1886. (49 & 50 Vict. c. 38; 51 & 52 Vict. c. 41, § 3.)

Larceny.

Simple larceny is the taking and carrying away of the personal goods of another, against his will and without his consent, without right, and with a felonious intent. The taking and carrying away must be felonious, *i.e.*, done *animo furandi*; but it may be actual or constructive. If a servant take his master's horse, and use it, and bring it home again; or if a man take his neighbour's plough, use it, and return it, it is trespass only (*a*).

If there be joint tenants or tenants in common of a personal chattel, and one of them carry away and dispose of it, this is no larceny, but merely the subject of an Action (*b*).

Where a bureau was sent to a carpenter to repair, and he found money therein which he converted to his own use, it was held to be *larceny* (*c*). And the law is the same as to property left in cabs (*d*).

Stealing Corn, Grass, &c.—Of things which adhere to the freehold, as corn, grass, trees, and the like, no *larceny* can be committed at common law. But the severance of them is a trespass, and is the subject of a civil action. But if the owner, or a stranger, sever them; *or if the thief himself* do so, and at another time carry them away, it is felony (*e*). And if any of these acts are done wilfully by anybody, malice will be implied, and the offenders will be liable to punishment under 24 & 25 Vict. c. 97.

Larceny at common law cannot be committed of things not the subject of property, nor of animals *feræ naturæ*, *i.e.*, at their natural liberty (*f*).

Dog stealing is punishable summarily for first offence; by indictment for misdemeanor for the second offence. Any person having stolen dogs in his possession or on his premises, or the skin of any stolen dog, knowing it to have been stolen, will be liable on conviction to a penalty of £20, and for a second offence it is a misdemeanor. Taking money to restore a stolen dog, corruptly, or under pretence of aiding the owner

(*a*) 4 Black. Comm., 232.
(*b*) 1 Hale, P. C., 513; *R.* v. *Bramley*, R. & R., 478.
(*c*) *Cartwright* v. *Green*, 2 Leach, 952; 8 Ves., 405; *Merry* v. *Green*, 7 M. & W., 631.
(*d*) *R.* v. *Lamb*, 2 East, P. C., 665.
(*e*) 4 Black. Comm., 233.
(*f*) 1 Hale, 511; Fost., 365.

to recover a stolen dog, is a misdemeanor. (24 & 25 Vict. c. 96, §§ 18—20.)

Shooting or Killing Pigeons.—Killing, wounding, or taking any house-dove or pigeon, under such circumstances as shall not amount to larceny at common law, is an offence punishable summarily, by fine of £2 above the value of the bird. (24 & 25 Vict. c. 96, § 23.)

Stealing Ferrets, Foxes, &c.—Stealing ferrets has been held to be no larceny, and the same of foxes, and such like animals, wild by nature, and not fit for the food of man (*a*).

Searching Servants' Boxes where Theft is Suspected.

In case of suspected theft by a servant, a master (or mistress) should not take it upon himself to give a servant into custody or to search the servant's boxes, but should at once, if reasonable grounds of suspicion exist, apply to a Magistrate for a search warrant. Or mention may be made of the facts of suspicion to the nearest policeman, leaving it entirely to him to take such course as he may think fit, and then he is not liable in trespass (*b*); for a policeman has a greater protection given to him by the law than a private individual: the former can justify his proceedings by proof of reasonable suspicion of a theft having been committed; the latter only by showing that a theft has actually been committed, and that there are reasonable grounds for suspecting the accused person (*c*).

Compromising a Felony.

Agreements for the suppression of criminal prosecutions are void. Therefore in an Action to recover a debt alleged to be due on a bond and note of hand, which were given in consideration that the Plaintiff would not appear against the Defendant, who stood indicted for perjury, judgment was given for the Defendant, and both bond and note were declared illegal (*d*).

All prosecutions for felony are of a public nature, and cannot be stifled by compromise, by payment of money not to sue, or by agreement not to bring an Action for malicious prosecution. All such agreements are wholly illegal, on the ground that they are opposed to public policy (*e*).

Compromising Assaults and other Misdemeanors.

A prosecution merely for an offence which might be made

(*a*) 1 Hale, 512; *R.* v. *Spearing*, R. & R., 250.

(*b*) *Brown* v. *Chapman*, 6 C. B., 365.

(*c*) *Grinham* v. *Willey*, 4 H. & N., 496; *Davis* v. *Russell*, 5 Bing., 354; *West* v. *Baxendale*, 9 C. B., 141; *Williams* v. *Cropwell*, 2 C. & K., 422.

(*d*) *Homer* v. *Ashford*, 3 Bing., 328; and see also *Ward* v. *Byrne*, 5 M. & W., 548; *Mallan* v. *May*, 11 M. & W., 853.

(*e*) *Rawlings* v. *Coal Consumers' Association*, 43 L. J. M. C., 111.

the subject of a civil Action—for instance, a common assault—may be legally compromised (*a*). But if the offence be in whole or in part of a public nature, no agreement to stifle a prosecution for it can be valid.

Where a party has a choice of remedies, by proceeding either civilly or criminally, and elects to take criminal proceedings, it is not against public policy to compromise such proceedings by agreement to make and accept a public apology; though it would be against public policy if the criminal proceedings were made use of for the purpose of extorting money (*b*).

Probation of First Offenders Act, 1887.

By this Act, where a person is convicted of larceny, false pretences, or other offence punishable with not more than 2 years' imprisonment, and no previous conviction is proved, if it appears to the Court that, regard being had to the youth (*c*), character, and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances, it is expedient that the offender be released on probation of good conduct, the Court may, instead of sentencing him at once, direct that he be released on his entering into a recognizance, with or without sureties, and during such period as the Court may direct, to appear and receive judgment when called upon, and in the meantime to be of good behaviour.

If the offender fail to observe the conditions of his recognizance, a warrant for his apprehension may be issued, that he may be brought up for judgment. (50 & 51 Vict. c. 25.)

Summary View of Felonies and Misdemeanors.

Offences as to Documents.—The following offences are felonies:—

Stealing, or fraudulently destroying, cancelling, or obliterating any valuable security, such as a bond, bill, note, &c. (24 & 25 Vict. c. 96, § 27.)

Stealing, or for any fraudulent purpose destroying, cancelling, obliterating, or concealing any document of title to real property. (24 & 25 Vict. c. 96, § 28.)

Stealing, destroying, cancelling, obliterating, or concealing the whole or any part of a will or codicil, either during the life of the testator or after his death. (24 & 25 Vict. c 96, § 23.)

Stealing, secreting, or destroying any post letter; if the letter contain money, or other valuable security, the punishment is

(*a*) *Kerr* v. *Leman*, 6 Q. B., 308; and in Ex. Cham., 9 Q. B., 37.

(*b*) *Fisher* v. *Apollinaris Co.*, 44 L. J. Ch., 500.

(*c*) No limit of age is expressed, but the Act being an enabling one, in accordance with the established rule of judicial interpretation it is to be construed liberally.

more severe. (7 Wm. IV. & 1 Vict. c. 36; 3 & 4 Vict. c. 76, § 30; 38 & 39 Vict. c. 22, §§ 6, 10; 45 & 46 Vict. c. 72, § 15.)

Uttering False Petitions, in order to procure any person to be admitted a pensioner as the widow of any officer of the Navy, or to sustain a claim against the Admiralty for money, is a misdemeanor. (28 & 29 Vict. c. 124, § 6.)

Falsely Personating Seamen and others, in order to receive any pay, wages, prize money, or other allowance payable by the Admiralty, is a misdemeanor punishable with penal servitude or imprisonment. (28 & 29 Vict. c. 124, § 8.)

Disclosure of Official Documents or Information.—Any person who shall wrongfully obtain, or attempt to obtain, official documents or information (including plans or models of any fortress, arsenal, factory, ship, &c., of Her Majesty), or wrongfully communicate such documents or information, will be liable to conviction for misdemeanor and imprisonment with hard labour or fine; or where such communication is made to the agent of a foreign State, to conviction for felony and penal servitude for life. (52 & 53 Vict. c. 52.)

Stealing Metal, &c.—Stealing, ripping, cutting, severing, or breaking, with intent to steal, any glass, metal, or woodwork, part of a house or building, or place of public ornament, or coal, ore, or other metal from a mine, is felony. (24 & 25 Vict. c. 96, §§ 31, 38.)

Burglary.—Burglary (as distinguished from housebreaking) is the breaking and entering the house of another in the night time, with intent to commit a felony therein, whether such felonious intent be executed or not; or, being therein, stealing and breaking out in the night time. Night, for the purposes of this offence, commences at 9 in the evening, and ends at 6 in the morning. (24 & 25 Vict. c. 96, § 1.)

If the breaking be by day, and the entering by night, it is no burglary, but the offence will be complete if the breaking be on one night and the entering on another, provided the breaking be with intent to enter, and the entry with intent to commit felony (*a*).

No outhouse or building is deemed part of a dwelling-house for the purpose of an indictment for burglary, unless there is a communication from one to the other by means of a covered passage. (24 & 25 Vict. c. 96, § 53.)

Housebreaking Implements, Disguise, &c.—Whoever shall be found by night armed with any dangerous weapon or instrument with intent to break or enter any dwelling-house or other

(*a*) Arch. Crim. Pl. & Evid. (20th ed.), 561.

building, or who shall be found at night with any picklock, key, crow, jack, bit, or other implement of housebreaking, or with his face blackened, masked, or disguised with intent to commit a felony, or who shall be found by night in any dwelling-house or building with intent to commit a felony, shall be guilty of a misdemeanor. (24 & 25 Vict. c. 96, § 58.)

Every instrument which, from its nature, is capable of being used for housebreaking purposes, though ordinarily used for lawful purposes (*e.g.*, a house door-key or pair of pincers) is an "instrument of housebreaking" within the statute, if the Jury think, from the circumstances, that the Defendant was in possession of it with intention to use it as such (*a*).

Receiving Stolen Goods or Money, knowing them to have been stolen, or unlawfully obtained, is felony (24 & 25 Vict. c. 96, § 91.)

Where proceedings are taken against any person for having received goods knowing them to be stolen, or for having in his possession stolen property, evidence may be given at any stage of the proceedings that there was found in the possession of such person other property stolen within the preceding 12 months; and such evidence may be taken into consideration for the purpose of proving that such person knew the said goods were stolen. And where evidence has been given that the stolen property has been found in his possession, then if such person has within five years immediately preceding been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given at any stage of the proceedings; but not less than seven days' notice, in writing, must be given to the accused that such proof is intended to be given. (34 & 35 Vict. c. 112, § 19.)

Dealers in Old Metals, Marine Stores, &c.—Any dealer in old metals who, either personally or by any servant or agent, purchases, receives, or bargains for any metal mentioned in the Table below, whether new or old, in any quantity at one time of less weight than stated below, is liable to a penalty of £5. (34 & 35 Vict. c. 112, § 13.)

Lead, or any composite the principal ingredient of which is lead	112 lbs.
Copper, brass, tin, pewter, German silver, or spelter, or any composite the principal ingredient of which is the like . . .	56 „

Sacrilege is the breaking and entering any church, chapel, meeting-house, or other place of divine worship, and commit-

(*a*) *Reg.* v. *Oldham*, 2 Den., C. C., 472.

ting any felony therein, or, being therein, stealing and breaking out of the same. It is considered a high crime, and the offender is liable to a severe punishment. (24 & 25 Vict. c. 96, § 50.)

Man-traps, Spring-guns, &c.—It is a misdemeanor, punishable severely, to set anywhere any spring-gun, man-trap, or other engine calculated to destroy human life or inflict grievous bodily harm, whether upon a trespasser or other person coming in contact therewith. They may only be set in a dwelling-house at night, for the protection thereof against thieves. (24 & 25 Vict. c. 100, § 31.)

Abduction of a Woman.—Whosoever shall by force take away or detain against her will any woman of any age with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, shall be guilty of felony. (24 & 25 Vict. c. 100, § 54.)

[The preceding and the next following enactments have been supplemented by the Criminal Law Amendment Act, 1885, as to which see *post*, p. 87.]

Stealing Children or their Clothes.—Stealing, enticing, or detaining any child under the age of 14, with intent to deprive any parent, guardian, or other person having the care of such child of the possession of such child, or with intent to steal any article upon or about the person of such child, is felony; and whosoever shall receive or harbour such child, knowing it to have been enticed, taken, or detained as aforesaid, will be guilty of felony. (24 & 25 Vict. c. 100, § 56.)

Obscenity and Lewdness.—In general all public obscenity and lewdness, or whatever is an open outrage of public decency and injurious to public morals, is a misdemeanor (*a*). And the proprietor of an obscene exhibition, in a booth on a race-course, to which spectators are admitted on payment, may be convicted of a misdemeanor (*b*).

Indecent Exposure in Bathing.—It is an indictable offence for a man to undress on the beach and bathe in the sea near inhabited houses from which he may be distinctly seen; although such houses may have been recently erected, and until then it may have been usual for men to bathe in great numbers at the place in question (*c*).

Rape.—The crime of rape is punishable with penal servitude for life, or not less than five years, or imprisonment not exceeding two years with or without hard labour, at the discretion of the Judge. (24 & 25 Vict. c. 100, § 48.)

(*a*) 1 Hawk. P. C. c. 5, § 4.
(*b*) *Reg.* v. *Saunders*, 45 L. J., M. C., 11.
(*c*) *R.* v. *Crunden*, 2 Camp., 89.

All persons present, aiding, assisting, or encouraging a man to commit a rape, are principals in the second degree, and punishable accordingly (*a*). It has been held that a woman, in the defence of her chastity, may lawfully kill a man whilst attempting to commit a rape on her (*b*).

Sea-Banks, Rivers, Canals, Ponds, &c.—Any person maliciously breaking or cutting down or otherwise damaging any sea-bank, sea-wall, or the bank, dam, or wall of any river, canal, drain, reservoir, pool, or marsh, whereby any land or building shall be in danger of being overflowed or damaged; or maliciously throwing, breaking, or cutting down, or otherwise destroying any quay, wharf, jetty, lock, sluice, floodgate, weir, tunnel, towing-path, drain, watercourse, or other work belonging to any port, harbour, dock, or reservoir, or on or belonging to any navigable river or canal, will be guilty of felony. (24 & 25 Vict. c. 97, § 30.)

Forgery.—To forge (or alter, or utter) forms used in courts of law, deeds, bonds, wills, bills of exchange, promissory notes, cheques, securities for money, debentures, powers of attorney for the transfer of Government funds or of stock, or similar documents, is felony. (7 & 8 Vict. c. 19, § 5; 24 & 25 Vict. c. 97, §§ 20—26; 24 & 25 Vict. c. 98, § 2.)

Forging Registers of Births, Marriages, and Deaths.—To destroy, deface, or injure, or forge, or fraudulently alter any entry relating to any birth, baptism, marriage, death, or burial, or to make false entries in any authorised copy of any register, is felony. (24 & 25 Vict. c. 97, § 36.)

Forgery of Telegrams.—Every person who forges, or wilfully and without due authority alters, a telegram, or utters a telegram knowing the same to be forged, or wilfully and without due authority alters, or who transmits by telegraph as a telegram, or utters as a telegram, any message or communication which he knows to be not a telegram, shall, whether he had or had not an intent to defraud, be guilty of a misdemeanor; and shall be liable to a fine of £10, and imprisonment, with or without hard labour, for a term not exceeding twelve months. (47 & 48 Vict. c. 76, § 11.)

Divulging Contents of Telegrams.—If any person employed by a telegraph company (which expression includes, it would seem, the General Post Office) improperly divulges to any person the purport of any telegram, he will be guilty of a misdemeanor, and liable on summary conviction to a fine not exceeding £20, or on conviction on indictment to imprisonment, with

(*a*) 1 Hawk., c. 41, § 10. (*b*) Fost., 274; 1 Hale, 85.

or without hard labour, for a term not exceeding one year, or to a fine not exceeding £200. (47 & 48 Vict. c. 76, § 11.)

Forging or Counterfeiting any Stamp used in Courts of Justice, or using such knowing it to be counterfeit, is felony. (42 & 43 Vict. c. 50, § 5, &c.)

Falsification of Accounts, Books, Writings, &c., by clerks and others, with intent to defraud, is a misdemeanor. (38 & 39 Vict. c. 24, § 1.)

Ill-treatment of Animals (*a*).—Any person cruelly beating, ill-treating, over-driving, over-riding, abusing, or torturing, or causing or procuring to be cruelly beaten, &c., any animal, is liable to a fine not exceeding £5, or not exceeding 3 months' imprisonment. (12 & 13 Vict. c. 92, §§ 2 and 18.)

Using a dog for the purpose of drawing or helping to draw any cart, carriage, truck, or barrow.—Fine, first offence, not exceeding 40*s.*; second offence, £5, or imprisonment. (17 & 18 Vict. c. 60, § 2.)

Improperly conveying an animal in or upon any vehicle in such a manner as to subject such animal to any pain or suffering.—Fine not exceeding £3 for first offence; £5 for second. (12 & 13 Vict. c. 92, § 2.)

Dishorning Cattle.—It has been judicially decided in England that the operation of dishorning cattle, as one causing extreme torture and pain, is a cruel abuse of the animal within § 2 of the Act 12 & 13 Vict. c. 92, and punishable accordingly (*b*). But according to Irish and Scotch decisions the practice is legal in Ireland or Scotland, the operation being declared to be useful and beneficial in object and not involving unnecessary pain.

Killing or Maiming Cattle.—Unlawfully and maliciously to kill, maim, or wound any cattle, is felony. (24 & 25 Vict. c. 97, § 40.)

Killing or Maiming Dogs, Birds, &c.—Whosoever shall unlawfully and maliciously kill, wound, or maim any dog, bird, beast, or other animal, not being cattle, but being either the subject of larceny, or ordinarily kept in a state of confinement,

(*a*) The word "animal" in the Acts here cited is defined (by 17 & 18 Vict. c. 60, § 3) to mean (except where indication to the contrary is expressly given) "any *domestic* animal, whether a quadruped or not." Hence, a recent prosecution (1898) for cruelly ill-treating a rat, which is a *wild* animal, failed; and it has been judicially decided that the confinement in a cage of a lion exhibited in a show did not render it a "domestic" animal, in respect of which a prosecution for ill-treatment could be maintained (*Harper* v. *Marcks*, [1894] 2 Q. B. 319); while in another case it was decided that there could be no conviction under the Acts for ill-treating a sea-gull, tame enough to be kept by its owner in a field (*Yates* v. *Higgins*, [1896] 1 Q.B. 166).

(*b*) *Ford* v. *Wiley*, 23 L. R. Q. B. D. 203.

or for any domestic purpose, shall be liable to fine or imprisonment for 6 months, and for a second offence 12 months. (24 & 25 Vict. c. 97, § 41.)

Cock-pit, Bull-baiting, &c.—Keeping a cock-pit, or using, acting, or suffering any such, for the purpose of fighting or baiting any bull, bear, badger, dog, cock, or other animal of wild or domestic nature—fine not exceeding £5 for every day. Persons present are liable to a similar fine. (12 & 13 Vict. c. 92, § 2.)

Drugging of Animals.—Any person administering without reasonable excuse a poisonous or injurious drug to any horse, cattle, or domestic animal, will be liable to a penalty of £5 or imprisonment with hard labour. (39 Vict. c. 13, § 1.)

Vagrancy is an offence described in detail by the Vagrant Act, 1824 (5 Geo. IV. c. 83), which designates three classes of offenders as follows :—

(i) *Idle and Disorderly Persons* : including every person who, being able, wholly or partly, to maintain himself or family, neglects so to do, whereby they become chargeable to the parish ; every person returning to and becoming chargeable to any parish from whence he has been legally removed, unless certified by the churchwarden and overseer as legally settled there ; every petty hawker or pedlar wandering abroad and trading without being licensed ; every common prostitute wandering in the public streets, or in any place of public resort, and behaving in a riotous or indecent manner ; and every person wandering abroad and placing himself in any public place to beg, or causing any child so to do—all of whom are punishable by imprisonment for a term not exceeding a calendar month ;

(ii) *Rogues and Vagabonds* : including every person committing *a second time* any of the offences specified in paragraph (i); every person pretending to palmistry or to tell fortunes ; or lodging in any outhouse or in the open air ; or not having any visible means of subsistence, and not giving a good account of himself ; or exposing to view, in any street or public place, an obscene print, picture, or other indecent exhibition ; or wilfully and obscenely exposing his person in any street or public place, or in view thereof, with intent to insult any female ; or endeavouring by the exposure of wounds or deformities to obtain alms ; or going about to collect alms or charitable contributions under a fraudulent pretence ; or running away and leaving his wife or children chargeable to the parish ; or playing or betting in any street or other open and public place at or with any table or instrument of gaming, or any game or pretended game of chance ; or having in his custody any

pick-lock, or other implement, with intent feloniously to break into any house or building; or being armed with any gun or offensive weapon, with intent to commit any felonious act; or being found in or upon any house or building, or in any inclosed yard, garden, or area, for any unlawful purpose; or being a suspected person or reputed thief frequenting any river or navigable stream, dock, wharf, or warehouse, or an avenue leading thereto, or any street or highway or place adjacent thereto, with intent to commit felony; or on being apprehended as idle and disorderly violently resisting such apprehension, and being subsequently considered as idle and disorderly—all of whom are punishable by imprisonment for a term not exceeding three calendar months;

(iii) *Incorrigible Rogues*: including every person escaping out of confinement before the expiration of the time for which he has been committed to prison under the Act; or committing an offence which subjects him *a second time* to be committed as a rogue and vagabond; or on being apprehended as a rogue and vagabond violently resisting such apprehension, and being subsequently convicted of being a rogue and vagabond—all of whom are liable to be remitted for trial before justices at quarter sessions, who may order such offenders to be whipped "at such time and place within their jurisdiction as according to the nature of the offence they in their discretion shall deem to be expedient" (*a*).

Paupers leaving a Casual Ward before they ought to leave, or refusing to be moved to a workhouse or asylum, or leaving a workhouse or asylum while detained therein, or refusing or neglecting whilst inmates of a workhouse or asylum to do the work or observe the regulations prescribed, or giving false names or making false statements for the purpose of obtaining relief, are also liable as idle and disorderly persons (see above); and any pauper committing any of the offences here specified, after having been convicted as an idle and disorderly person, or wilfully destroying or injuring his clothes, or damaging any of the property of the guardians, is liable as a rogue and vagabond (see above).

Using Chloroform or other stupefying or overpowering drug upon any person, with intent to commit any indictable offence, is felony. (24 & 25 Vict. c. 100, § 22.)

Administering Poison or other Destructive or Noxious Thing to

(*a*) According to a statement of the Home Secretary (Sir Matthew White Ridley) in the House of Commons, in debate on the measure subsequently passed as the Vagrancy Act, 1898 (see *post*, p. 90), this "whipping clause" of the Vagrancy Act, 1824, had been put in force only seven times during the previous five years.

any person unlawfully, with intent to injure, aggrieve, or annoy, is a misdemeanor. (24 & 25 Vict. c. 100, § 24.)

Malicious Injuries.—Throwing any corrosive fluid on any person, or sending any explosive substance to any person, with intent, in any of the cases aforesaid, to burn, maim, disfigure, or disable any such person, or to do some grievous bodily harm, whether any bodily injury be effected or not, is felony. (24 & 25 Vict. c. 100, § 29.)

Injuring Works of Art.—It is a misdemeanor to maliciously destroy or damage any book, manuscript, picture, print, statue, bust, or vase, or any other work of art, science, or literature, in a public museum, gallery, or library, or any picture, statue, monument, painted glass, &c., in a place of divine worship or in any university or college building. (24 & 25 Vict. c. 97, § 39.)

Counterfeiting or Defacing Coin.—Counterfeiting, colouring, impairing, clipping, or filing the current coin of the realm is felony. Buying, selling, importing, exporting, or uttering counterfeit coin is also felony. Defacing the current coin is a misdemeanor. It is felony to make, mend, or have in one's possession any coining tools, bearing the impress of the current coin of the realm. (24 & 25 Vict. c. 99, § 2 *et seq.*)

Defacing any of the Queen's current gold, silver, or copper coin, by stamping thereon any names or words, or using any machine or instrument for the purpose of bending the same, is an indictable misdemeanor. If any person shall tender or put off any coin so defaced, stamped, or bent as aforesaid, he will be liable to a fine not exceeding 40*s.* recoverable summarily. (24 & 25 Vict. c. 99, §§ 16, 17.)

Medals resembling Current Coins.—Any person who makes or has in his possession for sale, or offers for sale, or sells any medal, cast, coin, or other thing resembling any of the Queen's current coin, is guilty of a misdemeanor. (46 & 47 Vict. c. 45, § 2.)

Placing Gunpowder in or near any building, with intent to do bodily injury to any one, is felony (24 & 25 Vict. c. 100, § 12).

Explosive Substances.—Any person unlawfully and maliciously causing by any explosive substance an explosion likely to endanger life, or to cause serious injury to property, shall, whether injury to person or property has been caused or not, be guilty of felony. And any attempt or conspiracy to cause such an explosion is also felony ; and so also is the making, keeping, or having in possession any such explosive substance ; and aiders, abettors, and accessories are also to be deemed guilty of felony. (46 & 47 Vict. c. 3, § 3.)

Destroying Hop Binds.—Cutting or destroying hop binds

growing on poles in any plantation of hops is felony. (24 & 25 Vict. c. 97, § 19.)

Machines, Engines, &c.—Destroying machinery or engines of any kind is felony. (24 & 25 Vict. c. 97, § 15.)

Obstructing Railways.—Placing wood, stone, or other substance upon or maliciously taking up or displacing any rail, sleeper, &c., or diverting or moving points, signals, lights, or otherwise endangering the safety of any person, is felony (24 & 25 Vict. c. 97, § 35; 24 & 25 Vict. c. 100, § 32).

Doing anything to endanger passengers by railway by any unlawful act is a misdemeanor. (24 & 25 Vict. c. 100, § 34.)

Embezzlement by Clerks or Servants.—If any clerk or servant, or any person employed in the capacity of clerk or servant, shall by virtue of such employment receive or take into his possession any chattel, money, or valuable security for or in the name or on account of his master, and shall fraudulently embezzle the same, or any part thereof, he shall be deemed to have feloniously stolen the same. (24 & 25 Vict. c. 96, § 68.)

Embezzlement by Joint Owners.—If any person, being a member of a co-partnership, or one of two or more beneficial owners of any property, shall steal or embezzle any money, goods, or other property, belonging to such co-partnership or joint owners, every such person may be dealt with, tried, and punished as if he was not a member of such co-partnership. (31 & 32 Vict. c. 116, § 1.)

The distinction between embezzlement and larceny (as to which see also *post*, pp. 683 and 690) may be thus illustrated. If the clerk of a banker, or the shopman of a draper, receives money from a customer, and instead of putting it into a till or drawer puts it into his pocket and appropriates it, he is guilty of embezzlement; but if, when he receives it, he puts it into the till or drawer, and afterwards takes it out and appropriates it to his own use, he is guilty of larceny.

If upon the trial of a prisoner for embezzlement the offence turns out to be larceny, the prisoner will not be entitled to an acquittal, but he may be found guilty of the larceny, and *vice versâ*. (24 & 25 Vict. c. 96, § 72.)

Compounding a Felony.—To compound a felony is to take a reward for forbearing to prosecute an offence of the kind. This offence is punishable with fine and imprisonment.

Compounding Misdemeanors and Informations on Penal Statutes.—The compounding of these by taking any money or promise to excuse the Defendant, is illegal, and is punishable with fine and imprisonment.

Taking a Reward for the Restoration of Stolen Property.—

Taking or receiving money of another under pretence of assisting him to recover stolen property is a felony. (24 & 25 Vict. c. 96, § 101.)

Exhibiting False Lights to Ships and Vessels.—Unlawfully to mask, alter, or remove any light or signal, or unlawfully to exhibit any false light or signal with intent to bring any ship, vessel, or boat into danger, or unlawfully and maliciously to do anything tending to the immediate loss or destruction of any ship, vessel, or boat, is a felony. (24 & 25 Vict. c. 97, § 47.)

Removing Buoys and other Sea Marks.—Cutting away, casting adrift, altering, removing, or otherwise injuring, concealing, or destroying any boat, buoy, buoy-rope, perch or mark, used or intended for the guidance of seamen, is a felony. (24 & 25 Vict. c. 97, § 48.)

Destroying Wrecks.—Destroying any part of any ship or vessel stranded or in distress, or any goods or merchandise belonging thereto, is a felony. (24 & 25 Vict. c. 97, § 49.)

Stealing Oysters or Oyster Brood from the private property of another is felony; so also is dredging unlawfully within the limits of the oyster fishery of another. (24 & 25 Vict. c. 96.)

False Pretences.—Obtaining money or goods of another by false pretences is a misdemeanor. So is the inducing of persons by fraud or false pretences to execute deeds, or sign or indorse valuable securities. (24 & 25 Vict. c. 96, §§ 88—90.)

Personation.—Personating any heir, executor, administrator, wife, widow, next-of-kin, or relation of any person, with intent to obtain any land, money, or property, is a felony punishable with penal servitude for life. (37 & 38 Vict. c. 36, § 1.)

Arson.—Any person setting fire unlawfully and maliciously to any church, chapel, meeting-house, or other place of divine worship, is liable to penal servitude for life, or not less than five years. Setting fire to a dwelling-house, any person being therein, is punishable with penal servitude for life. Setting fire to a house, outhouse, building, barn, granary, &c., or to any grass, corn, coppice, plantation of trees, or to any heath, furze, gorse, or fern, wheresoever growing, is a felony, punishable with penal servitude. (24 & 25 Vict. c. 97, §§ 1—8.)

Threatening Letters.—Sending, delivering, or uttering, or causing to be received, knowing the contents thereof, any letter or writing, demanding of any person, with menaces and without reasonable or probable cause, any property, chattel, money, or other valuable thing, is felony. (24 & 25 Vict. c. 96, § 44.)

Sending any letter threatening to burn or destroy a house, buildings, barn, corn, &c., or to kill, maim, or wound any cattle, is felony. (24 & 25 Vict. c. 97, § 50.)

Sending Objectionable Matter by Post.—Any person who sends through the post explosive or dangerous substances, or sharp instruments not properly protected, or living creatures likely to do injury, or indecent or obscene matter, whether in the letter or packet or on the cover, is liable to a fine of £10, or on indictment to imprisonment with hard labour for 12 months. (47 & 48 Vict. c. 76, § 4.)

Accusing or Threatening to Accuse of a Crime.—Threats and accusations of this kind, made with intent to extort money, amount to felony, punishable with penal servitude for life or for not less than 3 years. (24 & 25 Vict. c. 96, § 46.)

So also are threats and accusations made with a view to induce a person to execute deeds or other documents, with intent to defraud. (24 & 25 Vict. c. 96, § 48.)

Demanding Money with a Threat.—Demanding money or other property of another with a threat (having no claim or right to the same) is felony. (24 & 25 Vict. c. 96, § 45.)

Robbery, Garotting, &c.—Robbery from the person, and assault with intent to rob, are felonies, punishable more or less severely, according to the circumstances and nature of the offence. (24 & 25 Vict. c. 96, §§ 40—43.) Whipping may be added to the punishment in all cases of robbery with violence, or attempt of the kind with violence. (26 & 27 Vict. c. 44, § 1.)

Stealing and Injuring Shrubs, Trees, &c.—Whosoever shall cut, steal, break, root up, or otherwise destroy or damage, with intent to steal, the whole or any part of any tree, sapling, shrub, or any underwood, growing in any park, pleasure-ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, shall (if the value of the articles stolen, or amount of injury done, exceed £1) be guilty of felony. And if the trees, &c., be growing elsewhere than as above mentioned, and the injury exceed £5, it will also be felony. Where the value or the injury done amounts to 1s., the offence is punishable before a court of summary jurisdiction by fine; for a second offence by 12 months' hard labour; for a third offence it will be felony. (24 & 25 Vict. c. 97, § 22.)

Frauds by Bankers, Agents, &c.—Whosoever, having been entrusted as a banker, merchant, broker, attorney, or other agent, with any money, or security for money, with any direction in writing to apply, pay, or deliver such money or security, or the proceeds thereof, shall, in violation of good faith, and contrary to the terms of such direction, in anywise convert to his own use or benefit, or otherwise misapply the same, will be guilty of misdemeanor. punishable with penal servitude or imprisonment (24 & 25 Vict. c. 96, § 75.)

Smuggling.—Assembling with any two other persons to unship, land, or conceal prohibited or uncustomed goods, renders the offender liable to a fine of not more than £500, nor less than £100; and if found armed or disguised within five miles of the sea coast, with goods liable to forfeiture, then to imprisonment for three years. (39 & 40 Vict. c. 36, §§ 188, 189.)

Assaulting, resisting, or obstructing a Customs or other officer duly employed in the prevention of smuggling—penalty, fine of £100. (39 & 40 Vict. c. 36, § 187.)

Smuggled Goods.—The bare fact of finding smuggled goods on a man's premises in his absence is not sufficient to convict him of smuggling. It must also be proved that he knew the goods were there, and knew they were contraband (*a*).

Naval, Military, and Public Stores.—Knowingly and without lawful authority receiving, concealing, or selling naval, military, or other public stores of any kind, is felony or misdemeanor, as the case may be (see 38 & 39 Vict. c. 25).

Injuring Volunteer Targets, or Property of Corps, &c.—Any person injuring the butts or targets of any corps of volunteers, or without leave of the commanding officer searching for bullets in or otherwise disturbing the soil forming such butts or targets, will be liable, on summary conviction, to a penalty not exceeding £5. (26 & 27 Vict. c. 65, § 30; 36 & 37 Vict. c. 77, § 29.)

Making away with or selling or destroying corps' property, or refusing to deliver up the property of a corps, or buying arms or accoutrements from a volunteer, are likewise offences punishable by penalties (26 & 27 Vict. c. 65, §§ 28, 29; 32 & 33 Vict. c. 11, §§ 3, 5).

Convicts at large on Tickets of Leave.—Every convict at large, holding a licence under the Penal Servitude Acts, is to notify his place of residence to the chief officer of police of the district, and the same on every change of residence; and every such male convict must, once in each month, report himself, either personally or by letter, as such chief officer may direct. (34 & 35 Vict. c. 112, § 5.)

Extortion by Public Officers.—Extortion is an abuse of public justice, which consists of any officer unlawfully taking, by colour of his office, from any person any money or thing of value that is not due to him, or more than is due, or before it is due. The punishment is fine and imprisonment, and sometimes a forfeiture of the office (*b*).

(*a*) *Ex parte Ransley*, 3 D. & R., 572.
(*b*) 4 Black. Comm., 141.

Malicious Neglect in Municipal Gas and Water Works.—Wilful and malicious neglect, by a person employed by a municipal authority engaged in supplying gas and water, to supply the same in accordance with a contract of service, renders such person liable to a penalty of £20 or three months' imprisonment. (38 & 39 Vict. c. 86.)

False "Characters" of Servants.—By 32 Geo. III. c. 56, the following acts are made criminal offences, subjecting an offender to a penalty of £20 and costs, or imprisonment:—

Falsely personating any master or mistress, or the executor, administrator, wife, relation, housekeeper, steward, agent, or servant of any such master or mistress, and giving either personally or in writing, any false, forged, or counterfeited character, to any person offering to be hired as a servant (§ 1).

Wrongfully or wilfully pretending or falsely asserting in writing that any servant has been hired or retained for any period of time, or in any station or capacity, other than that for which, or in which, he, she, or they shall have hired or retained such servant in his, her, or their service or employment, or for the service of any other person (§ 2).

Knowingly and wilfully pretending or falsely asserting in writing that any servant was discharged or left his, her, or their service at any other time than that at which such servant was discharged or actually left such service, or that any such servant had not been hired or employed in any previous service contrary to truth (§ 3).

Offering himself or herself as a servant, asserting or pretending that he or she has served in any service in which such servant shall not actually have served, or with a false, forged, or counterfeit certificate of character (§ 4).

Adding to, altering, effacing, or erasing any word, date, matter, or thing contained in or referred to in any certificate given by his or her last or former actual master or mistress, or by any person duly authorised by such master or mistress to give the same (§ 4).

Offering himself or herself as a servant in any service whatsoever, and falsely and wilfully pretending not to have been hired or retained in any previous service as a servant when he or she has been before in service (§ 5).

Disobedience of Master's Orders as to Corn, etc.—A servant who, contrary to the orders of his master, gives, or takes for the purpose of giving, his master's corn, pulse, roots, or other food to any horse or other animal belonging to or in the possession of, his master, is liable to a penalty not exceeding £5. (26 & 27 Vict. c. 103, § 1.)

SECTION II.—TRESPASS TO LAND AND TO THE PERSON.

What constitutes Trespass.

Trespass to *real property* consists in a wrongful entering upon the land or soil of another; which the law terms "breaking his close."

Trespass to the *person* consists in an assault or unlawful arrest or false imprisonment.

Any entry upon or breach of a man's close, if unauthorised by him, and unjustifiable at law, necessarily carries along with it *some* damage (*a*). So that proof of the trespass, without proof of damage sustained, will entitle the Plaintiff to recover nominal damages in an Action of trespass. This is explained by the rule that "for the vindication of every right there is a remedy" (*b*).

Therefore, when there has been a violation of a right, the person injured is entitled to an Action; and, consequently, to at least nominal damages.

On these principles a man may maintain an Action of trespass against another who, unauthorised, enters upon his land; and this although the Plaintiff may fail to prove actual or specific damage. The mere treading down of herbage has been deemed damage, within the law (*c*).

Possession is necessary to support an Action of trespass. If the owner has demised to another, trespass for an entry upon such land will not lie at his suit, the tenant in possession being the proper party to bring the Action.

In some cases a forcible entry on another man's land or house is justifiable, and will not be accounted trespass; as, if a man go to demand or pay money *there* payable; or to execute in a legal manner the process of law. But if a man abuse an authority given to him by law, he becomes a trespasser *ab initio* (*d*).

[As to trespass on land in search of game, see *post*, under "Pursuit, Killing, and Killing of Game," p. 113.]

Trespass in a Dwelling-house or upon Land.

"Every man's house is his castle," and the law views with great jealousy the right to a peaceable possession of a dwelling-

(*a*) 3 Black. Comm., 210.
(*b*) *Ubi jus ibi remedium*, Broom, Leg. Max. (6th ed.), 181.
(*c*) F. N. B., 87, 88.
(*d*) *Six Carpenters' Case*, 8 Co. 146 (a).

house; therefore the tenant or occupier may recover substantial damage against wilful intruders, and this though no actual pecuniary damage can be proved (*a*).

The owner of a house or land is justified, *as against a trespasser*, in making, if necessary, a forcible entry, and an assault, for the purpose of recovering possession of his property, although he may thereby be guilty of a breach of the peace (*b*).

But where a person enters upon the premises of another *in the exercise of a right*, or in the enjoyment of an easement, such as to pass along a right of way, or to draw water from a well, and such like, it cannot be a trespass if the right or easement legally exists. [See under "Easements," p. 413.]

Trespass in Pulling down Houses and Buildings.

In pulling down houses that are in contact with or adjoining others, proper precautions must be taken; for if an injury be sustained from a neglect to exercise care and skill, a wrong is done for which the doer is responsible. And so with regard to excavations near to a neighbour's land, banks, walls, or buildings, the rule being, "Enjoy your own property in such a manner as not to injure that of another person" (*c*).

Trespass of Cattle.

A man is answerable, not only for his own trespass, but also for that of his cattle; for if by his negligent keeping they stray upon the land of another (and much more if he permits or drives them on), and they there tread down his neighbour's herbage, and spoil his corn, or his trees, this is a trespass for which the owner must answer in damages. And the law gives the party injured a double remedy in this case, by permitting him to detain the cattle thus *damage feasant*, or doing damage, till the owner shall make him satisfaction: or by leaving him to the common remedy—by Action at law (*d*).

If cattle escape from one person's land through a defect in a fence which another is bound to repair, the former may maintain an Action against the latter for not repairing the fence, in respect of any damage thereby occasioned to his

(*a*) *Sears* v. *Lyons*, 2 Stark., 318; *Rogers* v. *Spence*, 13 M. & W., 581.
(*b*) *Harvey* v. *Brydges*, 14 M. & W., 437; and see *Blades* v. *Higgs*, 30 L. J. C. P., 347, 349.
(*c*) Broom, Leg. Max. (4th ed.), p. 357; *Humphries* v. *Brogden*, 12 Q. B. 739; *Dodd* v. *Holme*, 1 A. & E., 506.
(*d*) 3 Black. Comm., 212.

cattle, or even to cattle not his own, but kept by him on his land for another person, to whom he was liable (*a*); and so also, if the cattle eat poisonous herbage insufficiently fenced off from the adjoining field, as yew-tree branches, and die (*b*).

If diseased cattle trespass on another man's premises, and infect his cattle with the disease, it aggravates the trespass, and gives reason for increased damages (*c*).

Trespass of Cattle on Railway.

Railway companies are bound to make and maintain sufficient fences for preventing the cattle of owners and occupiers of adjoining lands from straying on their railway: and if, through defective fences, the cattle of those who own or occupy lands or premises *adjoining* the railway stray on to the line and are killed or injured, the railway company will be responsible for the damages (*d*): and so also, though the actual owner of the cattle be neither owner nor occupier of the land adjoining the railway. But railway companies are not bound to fence against trespassers. So where the Plaintiff's sheep escaped from his own land into a close, adjoining the railway, and were trespassing there, and then passed on to the Defendants' railway through defective fences, and were killed by a train: it was held that the Defendants were not responsible, because the Plaintiff was not the owner or occupier of the land *adjoining* the railway, and the company consequently were not bound to fence against him (*e*).

Where cattle strayed upon a highway adjoining a railway, and through defect of fences got upon the line and were killed: it was held that the company were not responsible for the injury, because the cattle were *trespassing* on the highway (*f*).

(*a*) *Rooth* v. *Wilson*, 1 B. & Ald., 59; *Singleton* v. *Williamson*, 31 L. J. Ex., 17.

(*b*) *Wilson* v. *Newberry*, 41 L. J. Q. B., 31; *Lawrence* v. *Jenkins*, 42 L. J. Q. B., 147; *Crowhurst* v. *Amersham Burial Board*, 48 L. J. Ex., 109. See *Erskine* v. *Adeane*, 42 L. J. Ch., 835, as to time within which Action must be brought; and as to general principles, see *Hilton* v. *Ankesson*, 27 L. J., 519. In this case it was decided that an occupier, though bound to take care that his cattle do not stray, is not bound to fence so as to prevent his neighbours' cattle coming on to his land.

(*c*) *Anderson* v. *Buckton*, 1 Str., 192.

(*d*) 8 & 9 Vict. c. 20, § 63; *Bassant* v. *G. W. R. Co.*, 8 C. B. (N. S.), 368 and 525; *Buxton* v. *N. E. R. Co.*, 37 L. J. Q. B., 258; *Sneesby* v. *L. & Y. R. Co.*, 45 L. J. Q. B., 1; *Corry* v. *G. W. R. Co.*, 50 L. J. Q. B., 386.

(*e*) *Rickets* v. *East & West Ind. Docks Co.*, 12 C. B., 174.

(*f*) *M. S. & L. R. Co.* v. *Wallis*, 14 C. B., 224.

But if cattle are passing along the highway in the care of servants of the owner, such is a lawful use of the highway; and if through defective fences the cattle get upon the railway and are injured, the company will be liable for the damages (*a*).

Trespass by Dogs.

Dogs cannot be destroyed for trespassing in pursuit of wild animals. A gamekeeper has no right to kill a dog for following game, although the owner of the dog has received notice that trespassing dogs will be shot (*b*). But if the dog be actually chasing game in a preserve, or deer in a park, or sheep in a fold, it may be killed to prevent their destruction (*c*); but not after the chasing is discontinued and the peril has ceased (*d*).

Trespass to the Person.

Trespass to the person consists in any direct injury to the person, as a battery, an assault, or an imprisonment; for either and all of which an Action of Trespass may be brought.

A *battery* is the unlawful beating of another. The least touching in a hostile fashion or against the will of the other is a battery (*e*). Striking another with a missile is a battery (*f*). And the act may be a trespass, although unintentional (*g*); but if it be the result of accident, or of some agency over which the Defendant had no control, it is not a trespass (*h*).

An *assault* is an attempt at a battery: a menacing attitude, such as holding up a hand or stick to strike a person who is within reach thereof at the time, constitutes an assault (*i*).

So also every laying of hands upon another and every blow or push; also presenting a gun or pistol at another in a hostile or threatening manner, whether loaded or unloaded, if within range and near enough to create terror and alarm; riding after a man and threatening to beat him; hitting at one man and unintentionally striking another; cutting off the hair of a pauper in the poor-house; throwing water upon another; and any gesture or threat of violence exhibiting an intention to

(*a*) *Midland R. Co.* v. *Dakin*, 17 C. B., 129.
(*b*) *Vere* v. *Lord Cawdor*, 11 East, 569; *Corner* v. *Champneys*, 2 Marsh, 584.
(*c*) *Wadhurst* v. *Damme*, Cro. Jac., 45.
(*d*) *Janson* v. *Brown*, 1 Camp., 41; *Wells* v. *Head*, 4 C. & P., 568.
(*e*) 3 Black. Comm., 120; *Rawlings* v. *Till*, 3 M. & W., 28.
(*f*) *Pursell* v. *Horn*, 8 A. & E., 602. (*g*) *Covell* v. *Laming*, 1 Camp., 497.
(*h*) *Hall* v. *Fearnley*, 3 Q. B., 919; *Wakeman* v. *Robinson*, 1 Bing., 213.
(*i*) 3 Black. Comm., 120; *Read* v. *Coker*, 13 C. B., 850.

assault, with the means of carrying that threat into execution. But as regards threatening gestures, if the parties at the time the gestures are used are so far distant from each other that immediate contact is impossible there is no assault (*a*).

A man is justified in laying hands upon another who endeavours to deprive him of his goods, and if he persists he may use force.

Striking at another is no assault, unless the party struck at be within reach (*b*). Striking a horse, whereby the rider is thrown, is an assault upon the rider (*c*) If a man strike at another with a cane or fist, or throw a bottle at him, or the like; if he miss him it is an *assault;* if he hit him it is a *battery* (*d*).

An *imprisonment* consists in the restraint of the liberty of a person, as by confining him in a prison or within walls, or by forcibly detaining him in an open place (*e*). But it must be a total restraint of his liberty for some period, however short. A partial obstruction of his will, such as the prevention of his going in one direction, or in all directions but one, is not an imprisonment (*f*).

False Imprisonment.

Giving a person into custody upon an unfounded charge is a false imprisonment, assault, and trespass to the person. And in the case of an unlawful arrest, it is no excuse to say that the party arresting made a mistake, and arrested the wrong man.

If a trespass be committed against the person of another, by one unlawfully arresting another, or confining, detaining, or imprisoning him, the party so unlawfully arrested, &c., may bring an Action against the offender for false imprisonment. Any restraint upon the freedom of another, by show of authority or force, is sufficient to constitute an imprisonment. If a person be restrained from going out of a room or leaving a house, such an infringement of his liberty will constitute an imprisonment (*g*).

Malicious Prosecution.

If a person maliciously, and without reasonable or probable cause, prosecute another, he will be liable to an Action for a

(*a*) Addison on Torts (6th ed.), 138.
(*b*) Comyn's Digest, Battery (c).
(*c*) 1 Mod. 2.
(*d*) Archbold, Cr. Pl. & Ev. (14th ed.), 556.
(*e*) 3 Black. Comm., 127.
(*f*) *Bird* v. *Jones*, 7 Q. B., 742; *per* Lord Denman, C. J.
(*g*) *Warner* v. *Riddiford*, 4 C. B. (N.S.), 206.

malicious prosecution (*a*). And so of malicious informations and complaints preferred before Justices of the Peace.

Putting Dangerous Things in Motion.

Every person who puts a dangerous thing in motion, which causes injury to another, either in person or property, is, in general, responsible for the mischief it occasions; as in an action of trespass and assault for originally throwing a squib, which, after having been thrown about in self-defence by other persons, at last put out the Plaintiff's eye (*a*). The guiding question in these cases always is, whether the injury be the direct and immediate act of the Defendant (*b*).

Wounding.

"Mayhem" is the violently depriving another of a limb or an eye, and is felony, unless done on a justifiable or accidental occasion. Heavy damages may sometimes be recovered against persons causing such injuries; but when a felony, the offender should be prosecuted.

Wounding may be either wilful and malicious, or accidental. In the one case it is a felony; in the other it may be a misdemeanor. (See 24 & 25 Vict. c. 100, §§ 18, 20.)

Assaults, Affrays, and Fighting.

For threats, assaults, battery, wounding, and mayhem, an Action at law will lie, and a jury may give damages for any injury sustained; or proceedings may be taken before Justices of the Peace.

An affray is the fighting of two or more persons in some public place; and all persons present, countenancing such fight, are guilty of a misdemeanor. If the fighting be in private, it is no affray, but an assault (*c*).

In case of trespass upon another's land, the owner must first request the trespasser to depart, before he will be justified in laying hands upon him, and if he refuse the owner can only justify necessary force to turn him out. But if the trespasser use force, then the owner may apply force to repel him.

Where, in case of alleged trespass followed by assault, a *bonâ fide* question as to the title to the land is raised, the summary jurisdiction of the Justices in cases of assault and battery will be ousted (24 & 25 Vict. c. 100, § 46); and the person assaulted will be left to his remedy by Action.

(*a*) *Churchill* v. *Siggers*, 3 E. & B., 937.
(*b*) *Scott* v. *Shepherd*, 2 Black., 892.
(*c*) 4 Black. Comm., 145; *R.* v. *Perkins*, 4 C. & P., 537.

Proceedings for Assault.

The person injured by an assault has two remedies at law: he may either proceed by Action at law for damages, or before Justices of the Peace for punishment of the offender.

Formerly, although a person was convicted before Justices of an assault, or acquitted upon the merits, the complainant could proceed again by Action at law against him. But now the Justices are required forthwith, if they dismiss the complaint, to make out a certificate under their hand and deliver it to the party against whom the complaint was made, and such certificate is a release from all further proceedings, civil and criminal, for the same cause: and if the party is convicted and pay the fine or suffer the imprisonment awarded he is also released from all other proceedings. (24 & 25 Vict. c. 100, §§ 44, 45.)

And where an assault has been committed upon a married woman, and the husband has thereby sustained loss, the protection afforded by the statute will be a bar to any proceedings by the husband against the person charged with the assault to recover damages for such loss (*a*).

Where any person shall be convicted, on any indictment, of any assault, whether with or without battery or wounding, such person may, in addition to the sentence, be adjudged to pay to the Prosecutor his costs of the prosecution and loss of time. (24 & 25 Vict. c. 100, § 74.) (*b*)

Malpractices in Surgery.

A case of prosecution for murder—commonly resulting (unless the defendant be acquitted) in conviction for manslaughter—is that of a medical practitioner or midwife who in unlawfully procuring miscarriage has caused the death of the patient, it being settled law that where in the course of committing a felony the felon (however unwittingly) inflicts fatal injuries on another person, he is guilty of murder; and to procure abortion, except in cases of medical necessity and in the interest of the patient's life, is felony (*c*).

(*a*) *Masper* v. *Brown*, 1 C. P. D., 97; *Holden* v. *King*, 46 L. J. Ex., 75.
(*b*) See *Bradshaw* v. *Vaughton*, 30 L. J. C. P., 93.
(*c*) *Tinkler's Case* (1781), 1 East P. C. 230. It has been suggested (*per* Sir J. F. Stephen in *Regina* v. *Serné*, 16 Cox C. C. 311) that the felony committed must be one involving risk of human life; but the proposition of the earlier authorities, as stated in the text above, is wider than this. In practice, however, in cases of prosecution for causing miscarriage resulting in death, juries commonly, under direction from the judge, if they find the prisoner guilty, treat the offence as manslaughter—that is, as culpable but not deliberate homicide.

SECTION III.—OFFENCES AGAINST MORALITY AND DECENCY.

Criminal Law Amendment Act, 1885.

By this Act (48 & 49 Vict. c. 69), a person who (i) procures or attempts to procure any girl or woman under 21, not being a common prostitute, or of known immoral character, to have unlawful carnal connexion with any other person; or (ii) procures or attempts to procure any woman or girl to become a common prostitute; or (iii) procures or attempts to procure any woman or girl to leave the United Kingdom, with intent that she may become an inmate of a brothel elsewhere; or (iv) procures or attempts to procure any woman or girl to leave her usual place of abode (such place not being a brothel), with intent that she may, for the purposes of prostitution, become an inmate of a brothel, will be liable to imprisonment for two years, with or without hard labour (§ 2).

Any person who (i) by threats of intimidation procures or attempts to procure any woman or girl to have any unlawful carnal connexion; or (ii) by false pretences or false representations procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connexion; or (iii) applies, administers to, or causes to be taken by any woman or girl any drug or thing, with intent to stupefy or overpower, so as to thereby enable any person to have unlawful carnal connexion with her, will be liable to the like imprisonment (§ 3).

Any person who unlawfully and carnally knows any girl under the age of thirteen will be guilty of felony, and liable to penal servitude for life, or for not less than five years, or to be imprisoned for two years, with or without hard labour.

Any person who attempts to have unlawful carnal knowledge of any girl under thirteen will be liable to be imprisoned for two years, with or without hard labour.

In the case of an offender whose age does not exceed sixteen years, the Court may, instead of sentencing him to any term of imprisonment, order him to be whipped, and sent to a reformatory (§ 4).

Any person who (i) unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any girl being of or above the age of thirteen years and under sixteen (*a*); or

(*a*) It is not a criminal offence for a girl between 13 and 16 to aid and abet, or to solicit, a male person to commit the misdemeanor (*Reg.* v. *Tyrrell*, C. C. R. [1894] 1 Q. B., 710.)

(ii) unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of any female idiot or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew that the woman or girl was an idiot or imbecile, will be liable to be imprisoned for two years, with or without hard labour. No prosecution is to be commenced for an offence under subsection (i) more than three months after the commission of the offence (§ 5).

Any person who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control thereof, induces or knowingly suffers any girl of such age as in this section mentioned to resort to or to be in or upon such premises for the purpose of being unlawfully and carnally known by any man, (i) will, if such girl is under the age of thirteen years, be guilty of felony, and be liable to penal servitude for life, or for not less than five years, or to be imprisoned for two years, with or without hard labour; and (ii) if such girl is of or above the age of thirteen and under the age of sixteen years, will be liable to the like imprisonment for two years (§ 6).

Any person who, with intent that any unmarried girl under the age of eighteen years should be unlawfully and carnally known by any man, takes such girl out of the possession and against the will of her father or mother, or any person having the lawful care or charge of her, will be liable to the like imprisonment for two years (§ 7).

Any person who detains any woman or girl against her will (i) in or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man, or generally, or (ii) in any brothel, will be liable to the like imprisonment for two years.

Where a woman or girl is in or upon any premises for the purpose of having any unlawful carnal connexion, or is in any brothel, a person shall be deemed to detain such woman or girl if he withholds any wearing apparel or other property belonging to her, or threatens her with legal proceedings if she take away wearing apparel lent or supplied to her (§ 8).

If it appears to any justice, on information by any parent, relative, or guardian of any woman or girl, or any other person who, in the opinion of the justice, is *bonâ fide* acting in the interest of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such justice, he may issue a warrant authorising any person named therein to search for and detain in a place

of safety such woman or girl until she can be brought before a justice; when such woman or girl may be delivered up to her parents or guardians, or otherwise dealt with as circumstances may require. The justice issuing such warrant may cause any person accused of so unlawfully detaining such woman or girl to be apprehended.

A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being unlawfully and carnally known by any man, and (i) is under the age of sixteen years; or (ii) if of or over sixteen and under eighteen, is so detained against her will, or against the will of her father or mother or of any other person having the lawful care or charge of her; or (iii) if of or above eighteen years is so detained against her will (§ 10).

Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by a male person of any act of gross indecency with another male person, will be liable to two years' imprisonment with or without hard labour (§ 11).

Where on the trial of any offence under the Act it is proved that the seduction or prostitution of a girl under the age of sixteen has been caused, encouraged, or favoured by her father, mother, guardian, master, or mistress, it shall be in the power of the Court to divest such father, mother, guardian, master, or mistress of all authority over her, and to appoint any person willing to take charge of such girl to be her guardian (§ 12).

Brothels or Bawdy-houses.

The keeping a bawdy-house is a common nuisance (*a*), and indictable as such. A married woman may be indicted and punished for this offence as if she were sole and unmarried: or her husband may be jointly indicted with her (*b*). If a lodger let her apartments for indiscriminate prostitution, it is as much a bawdy-house as if she held the whole house (*c*). But where the owner of a house let it out in parts to women as weekly tenants, who, with his knowledge and assent, used their apartments for prostitution, it was held that he could not be convicted of keeping a bawdy-house (*d*).

If two inhabitants of the parish give notice of the nuisance, in writing, to the constable or police officer, such officer must

(*a*) Hawk., P. C., c. 1, cc. 74, 75, § 61; 1 Russell, Crimes (5th ed.), 427.
(*b*) *R.* v. *Williams*, 1 Salk., 383.
(*c*) *R.* v. *Pierson*, 2 Lord Raym., 1197.
(*d*) *R.* v. *Stannard*, 1 L. & C., 349; *R.* v. *Barrett*, 1 L. & C., 263.

go with them to a Justice of the Peace; and on oath being made by them of the truth of the notice, and on their entering into a recognizance to appear and prosecute at the Sessions or Assizes, the keeper of such bawdy-house will be required to take his or her trial for the offence. (25 Geo. II. c. 36, § 5.) The consent of the overseers of the parish should be first obtained, as otherwise the Court has no power to order payment of the costs of the prosecution. (58 Geo. III. c. 70, § 7.)

Any person who keeps or acts or assists in the management of a brothel, or, being the tenant, lessee, or occupier of any premises, knowingly permits them to be used for purposes of habitual prostitution, is liable on summary conviction to a penalty of £20 or imprisonment for three months, with or without hard labour, or for a second offence to a penalty of £40 or four months' imprisonment. (48 & 49 Vict. c. 69, § 13.)

Vagrancy Act, 1898, *and Traders in Prostitution.*

By this Act (61 & 62 Vict. c. 39), applying to England and Wales, but not to Scotland or Ireland, every male person who knowingly lives wholly or in part on the earnings of prostitution, or in any public place persistently solicits or importunes for immoral purposes, shall be deemed a rogue and vagabond within the meaning of the Vagrancy Act, 1824, and may be dealt with accordingly (see *ante*, p. 72); and if it appear to a court of summary jurisdiction by information on oath that there is reason to suspect that any house is used by a female for purposes of prostitution, and that any male person residing in or frequenting the house is living on the earnings of the prostitute, the court may authorise a constable to arrest him.

Further, by the same Act, where a male person is proved to live with or to be habitually in the company of a prostitute and has no visible means of subsistence, he is to be deemed to be knowingly living on the earnings of prostitution, unless he show the contrary.

Seduction.

An Action for seduction is not a part of criminal but of civil procedure, but it may be conveniently dealt with here before bastardy proceedings are referred to.

In order to maintain an Action for seduction, it must be proved that the relationship of master and servant existed between the Plaintiff and the female seduced (*a*).

The principle of this Action being *loss of service*, it follows

(*a*) *Davies* v. *Williams*, 10 Q. B., 725.

that it may be brought by anyone who has sustained such a loss through the seduction of the girl (*a*).

A father cannot maintain an action for the seduction of his daughter who is at the time of the seduction in the service of another: the Action must be brought by her master (*b*). But if she act as servant to her parents, or perform any domestic service, and be living with them at the time, the father may maintain an Action against the seducer. Very slight evidence of service has been held sufficient, such as making tea, nursing children, &c. (*c*). And in that case a parent can recover compensation for the injury his (or her) feelings may have sustained (*d*): it is in this respect that liberal damages are often given by a jury.

The age of the female seduced is immaterial: so also whether she be a girl, a widow, or married woman (*e*).

It is not necessary that the seduced girl should appear as a witness at the trial, if the offence can be otherwise proved.

Mother's Liability for a Bastard Child.

The mother of a bastard child, so long as she remains unmarried or a widow, is bound to maintain her bastard child (or children) until the age of 16. (4 & 5 Will. IV. c. 76, § 71.)

But if she can prove who is the father, he may be required to contribute towards the maintenance, provided she takes proceedings to compel him to do so (by an "affiliation summons," as to which see next page) whilst she is a single woman (*f*).

An affiliation order may be obtained by a married woman living apart from her husband, if she can bring sufficient evidence as to the paternity of the child (*g*).

Promise by Father of Annuity for Bastard Children.

Where a Defendant, the father of seven bastard children, had verbally promised to allow the mother an annuity of £300 a year, in quarterly payments, for the maintenance and education of the children, and paid the same for several years, and then refused to continue the payments, the mother sued him for and recovered two years' arrears; and it was held that, the Action being founded upon a good consideration—viz. the maintenance and education of the children—she was entitled to recover (*h*).

(*a*) *Fores* v. *Wilson*, Peake, 55; *Howard* v. *Crowther*, 8 M. & W., 601.
(*b*) *Davies* v. *Williams*, 10 Q. B., 725.
(*c*) *Thompson* v. *Ross*, 29 L. J., Ex., 1.
(*d*) *Dodd* v. *Norris*, 3 Camp., 520.
(*e*) *Harper* v. *Luffkin*, 7 B. & C. 387. (*f*) *Stacey* v. *Lintell*, 48 L. J. M. C. 108.
(*g*) *Regina* v. *Collingwood*, 17 L. J. M. C., 168; L. R. 12 Q. B. D., 681.
(*h*) *Knowlman* v. *Bluett*, 43 L. J. Ex., 29.

Proceedings upon Affiliation Summons.

Any single woman being with child, or delivered of a bastard child, may, either before the birth or within 12 months after, or at any time after, on proof that the alleged father has within 12 months of the child's birth paid money for its maintenance, or if he left England within 12 months of the birth, then at any time within 12 months next after his return to England, apply to a Justice for a summons against the alleged father (35 & 36 Vict. c. 65, § 3.)

The evidence of the mother alone will not be sufficient to prove the paternity of her bastard child; her evidence must be corroborated in some material particular by other testimony (35 & 36 Vict. c. 65, § 4.)

Evidence that the Defendant has been seen with the woman at the time and place fixed by her as the occasion of the connexion, under circumstances which would admit of connexion taking place, is evidence of corroboration. So also any admission made by the Defendant that the child was his, or that he was intimate with the mother about the time stated by her (*a*).

The payment of any money by the putative father for the maintenance of the child is also corroboration (*b*).

The Defendant may himself give evidence to contradict the mother: and he may call witnesses in support of his case, also to prove (if denied by the mother) that another person had connexion with her about the same time, and might thereby have been the father of the child (*c*).

If the Justices before whom the summons is heard are satisfied that legal proof has been adduced against the Defendant, they may make an Order on him for payment to the mother of a weekly sum not exceeding *five shillings a week* for the maintenance and education of the child, for expenses incidental to the birth, for the funeral expenses of the child if it has died, and for the costs of obtaining the order.

If the application be made before the child's birth, or within 2 months after, such weekly sum may, if the Justices think fit, be calculated from the birth.

The payments ordered upon the father may be enforced by warrant and distress upon his goods; and he may be apprehended upon warrant, and brought before Justices if he neglect or refuse to pay. (35 & 36 Vict. c. 65, § 4.)

If the father has no goods upon which a distress can be made, he may be sent to gaol for any period not exceeding

(*a*) *Reg.* v. *Pearcey*, 16 Jur., 193.
(*b*) *Reg.* v. *Berry*, 28 L. J. M. C., 86.
(*c*) *Garbutt* v. *Simpson*, 32 L. J. M. C., 186.

3 months ; but the imprisonment operates only as a satisfaction for the arrears.

In the case of twins a separate weekly sum may be awarded for each child.

The Justices in making the order have a discretionary power to direct that the weekly payments shall continue until the child is 16 ; in which case the order will remain in force until that period (35 & 36 Vict. c. 65, § 5), if the child lives so long, whether the mother marries or not (*a*). Or the Justices may, in their discretion, limit the duration of the order to a shorter period, or until the marriage of the mother (*b*).

An affiliation order duly made in England may be enforced in Scotland, and *vice versâ*. (44 & 45 Vict. c. 24, § 6.)

An affiliation order is not revoked by the subsequent marriage of the mother, though the man she marries is able to maintain the child (*c*).

If the child becomes chargeable to the parish after the making of the order, the Justices may by order appoint some relieving or other parish officer to receive the payments on account of the parish. (35 & 36 Vict. c. 65, § 7.)

If a bastard child become chargeable to a Union or parish, the Guardians may cause the alleged father to be summoned to show cause why he should not contribute towards its relief, and, upon proof that he is the father, the Justices may order him to pay such a sum weekly or otherwise, during such time as the child shall continue chargeable, as shall appear to them to be proper. (36 Vict. c. 9, § 5.)

The putative father, if dissatisfied with the decision of the Justices, may appeal to Quarter Sessions (7 & 8 Vict. c. 101, § 4 ; 47 & 48 Vict. c. 43, § 4 ; 36 Vict. c. 9, § 5).

Affiliation Orders against Soldiers.

An affiliation order made against a soldier of the regular forces cannot be enforced in the usual way against him in person or pay, arms, clothing, &c. ; but a copy of the order is to be sent to the Secretary of State, who is empowered to impound a portion of the soldier's pay towards the payments due from him under the order. (44 & 45 Vict. c. 58, § 145.)

(*a*) *Hardy* v. *Atherton*, 50 L. J. M. C., 105.
(*b*) *Pearson* v. *Heys*, 50 L. J. M. C., 124.
(*c*) *Southeron* v. *Scott*, 50 L. J. M. C., 56 ; *Hardy* v. *Atherton*, 50 L. J. M. C., 105.

SECTION IV.—GOODS STOLEN OR LOST.

Rights as to Stolen Property.

A person who has been robbed is entitled to retake the stolen property wherever he can find it; provided the person in possession has not acquired a title to it by purchase in market overt, without notice of the robbery. But he is not justified in committing an assault or breach of the peace in order to recover it. He should demand it, and if possession is refused, bring an Action (*a*). He should also be quite certain as to its identity.

Market Overt.

Market overt implies "open market." All sales, bargains, and contracts of goods and chattels in fairs or markets overt are binding and indisputable: and the maxim *Caveat emptor* ("Let the purchaser beware") applies to all such contracts.

Market overt in the country is held only on special days provided for particular towns, by statute, charter, or prescription; but in London, every day, except Sunday, is market day, and all shops (except pawnbrokers' shops) in which goods are exposed for sale are market overt for the purposes of their own trade: but only within the City (*b*); therefore West-end and suburban shops are not market overt. And a wharf, though within the City, is not market overt (*c*).

In the country, the market place or spot set apart by custom for the sale of particular goods is the market overt. It is not all shops in which goods are exposed and offered for sale that are market overt. A shop is not a market overt for the sale of any other commodities than those which are customarily bought and sold or exposed for sale therein (*d*).

There is also a distinction between a sale over the counter to a customer, of things exposed for sale in a shop, and a sale to the shopkeeper himself, of things bought by him to be added to his stock-in-trade: the one may be a sale in market overt, but not so the other. For instance, if a servant steal his master's books, and go and sell them to a bookseller in the City of London, the sale to the bookseller is not a sale in market overt, and the bookseller acquires no right to the books as against the true owner from whom they were stolen; but if the books are added to the stock-in-trade, and exposed for sale in his shop, and then purchased *bonâ fide* by a customer

(*a*) See Addison, Torts (6th ed.), 451.
(*b*) 5 Co. 83 (b); *Lyons* v. *De Pass*, 11 A. & E., 326.
(*c*) *Wilkinson* v. *King*, 2 Camp., 335.
(*d*) *Taylor* v. *Chambers*, Cro. Jac., 68.

in the ordinary way of trade, the purchase by the customer would be a purchase in market overt, and give the customer an indefeasible title to the books (*a*).

And where jewels were sold to a jeweller in the City of London, in a private show-room over the shop, it was held that the sale was not in market overt (*b*).

Stolen Goods and Horses Purchased in Market Overt.

As a general rule, the purchaser, in market overt, of stolen goods acquires a title to them; but, with regard to stolen *horses* purchased in market overt, the owner can claim them of the purchaser, at any time within 6 months, on proving before a Magistrate that such horse was stolen, and on tendering the *bonâ fide* amount that was paid for it in market overt (*c*). Although the time is limited, by statute, to 6 months, still the owner of the horse can at any time recover it by bringing an Action against the person who refuses to deliver it up (*c*).

By the Larceny Act, 1861 (24 & 25 Vict. c. 96, § 100), notwithstanding a sale of stolen goods in market overt to an innocent purchaser, on conviction of the thief the property in the goods will re-vest in the original owner, and he will be entitled to an order for their restitution (*d*).

The privilege of market overt does not apply to a sale of goods by sample, for the goods actually sold must be exposed in open market, and the sale completed there (*e*).

With regard to horses and other stolen goods not sold in market overt, the owner may take them wherever he finds them; but it is always advisable to procure the aid of a constable before doing so.

Recovery of Stolen Property.

Property in a bank note passes, like that in cash, by deli-

(*a*) *White* v. *Spettigue*, 13 M. & W., 603.

(*b*) *Hargreave* v. *Spink* (1892), 1 Q. B., 25.

(*c*) *Gibb's Case*, Owen, 27; 2 & 3 Ph. & M., c. 7; 31 Eliz. c. 112.

(*d*) See *Scattergood* v. *Sylvester*, 15 Q. B., 506; and *Bentley* v. *Vilmont*, 18 Q. B. D., 322; H. L. 12 App. Cas., 471. Difficult and interesting questions have been raised in the Courts touching the application of this statutory provision in cases where goods obtained on hire-purchase agreements have been fraudulently sold by the persons obtaining them. The present state of the law, on the decided cases, would seem to be that, on the conviction for larceny of a hirer of goods held by him under a hiring agreement which does *not* amount to a contract to *purchase*, the property in the goods revests in the original owner or vendor; but if the agreement *does* amount to such a contract, then the property in the goods does *not* revest. (*Payne* v. *Wilson*, 73 L. T. R., 12; W. N. [1895], 110; 43 W. R., 657). As to hire-purchase agreements, see *post*, pp. 184, 185; and see also W. H. Russell on *The Hire Purchase System*. (London: Waterlow and Sons, Limited).

(*e*) *Hill* v. *Smith*, 4 Taunt., 532.

very ; and a party taking it *bonâ fide* and for value can retain it, as against a former owner from whom it has been stolen (*a*).

In all cases where a person has been robbed, and the thief is caught, prosecuted, and convicted, the owner of the property is entitled to have it delivered up to him at once. But if the supposed thief be acquitted by the Jury, and the property be not satisfactorily identified, the acquitted person can claim it, unless the Court order it to be restored to the prosecutor. In a case where a prisoner was convicted of stealing money, and was at the time the owner of a horse which, it was clear from the evidence, had been purchased with the stolen money, an order was made by the Judge for the delivery of the horse to the prosecutor (*b*).

But the Court cannot order a Bank of England note, which has been paid and cancelled, to be delivered up to the prosecutor of the person convicted of stealing it (*c*).

Under the Police (Property) Act, 1897 (60 & 61 Vict. c. 30), where any property has come into the possession of the police in connection with a criminal charge, and has remained in their possession for a year, or being perishable or inconvenient to retain has been sold, and the proceeds have remained in hand for a year, a court of summary jurisdiction, on application either by an officer of police or a claimant of the property, may make an order for its delivery, or the payment of the proceeds, to the owner, or if the owner cannot be ascertained may make such order as may seem meet.

An order made under the Act is not to affect the right of any person to take within six months from its date legal proceedings for the recovery of the property against any person in possession of it by virtue of the order, but on the expiration of the six months such right is to cease (*d*).

Articles (not being Treasure Trove) Lost and Found.

Whoever finds a lost article is entitled to the possession of it, as against all parties but the real owner. And if a person discount or cash a bank note, knowing that another person found it, he is in no better position than the finder, and cannot detain it from the owner who has lost it (*e*).

(*a*) *Miller* v. *Race*, 1 Burr., 452. (*b*) *R.* v. *Powell*, 7 C. & P., 646.
(*c*) *R.* v. *Stanton*, 7 C. & P., 431.
(*d*) This provision effects a notable change in rights of property, as at common law the owner of the property would have six years after demand and refusal within which to take proceedings (see *Wilkinson* v. *Verity*, 40 L. J. R. C. P. 141).
(*e*) *Burn* v. *Norris*, 2 Cr. & M., 579.

The finder of a jewel or other article may maintain an Action of Trover for a conversion thereof by a wrong-doer: that is to say, if a person, having found a jewel or other article, entrust it to another person, and the latter convert it to his own use, the finder may bring an Action against the other (*a*).

A master tradesman is answerable for the loss of a customer's property, entrusted to such tradesman's servant, in the course of business (*a*).

Where a person has wrongfully converted property, and will not produce it, it is presumed in law, as against him, to be of the best description (*a*).

Where a person found a sovereign in the high road, and, at the time of finding it, had no reasonable means of knowing to whom it belonged, but intending at the time he found it to appropriate it to his own use, even if the owner should become known; and on the owner being speedily made known the finder refused to give it up; it was held that such finder was not guilty of larceny (*b*). But where a bureau was sent to a carpenter to be repaired, and he discovered in a secret drawer nine hundred guineas, which he appropriated to his own use, it was held that he was guilty of felony (*c*). If a man buy at an auction a chattel, and afterwards discover valuables concealed within it, he does not thereby acquire a right to them, unless it can be made to appear that the vendor intended to sell the contents whatever they might be (*d*).

Treasure Trove.

Treasure trove is in any money or coin, gold, silver, plate, or bullion, found hidden in the earth, or other private place, the owner thereof being unknown; in which case the treasure belongs to the Crown; but if he that hid it be known, or afterwards found out, the owner, and not the Sovereign, is entitled to it (*e*). And although the owner of the land himself find it, still it belongs to the Crown.

It is a contempt against the Royal prerogative to conceal treasure trove; the concealment was formerly punishable by death, but now only by fine and imprisonment (*e*).

On treasure trove being given up when found, it has been the practice of the Crown of late years to reward the finder to the intrinsic value of it in money.

(*a*) *Armory* v. *Delamire*, 1 Smith, L. C. (9th ed.), 385.
(*b*) *R.* v. *Glyde*, 37 L. J., M. C., 107.
(*c*) *Cartwright* v. *Green*, 2 Leach, 952; 8 Ves., 405.
(*d*) So held by County Court Judge at Leighton Buzzard, 1886; and see *Merry* v. *Green*, 7 M. & W., 623.
(*e*) 1 Black. Comm., 297; 3 Inst., 133.

SECTION V.—PROCEDURE IN CRIMINAL CASES.

"Summary" and "Indictable" Offences.

Breaches of the criminal law are divisible into (1) offences punishable upon summary conviction, and (2) indictable crimes.

Offences falling within (1) are dealt with before Courts of Summary Jurisdiction, which consist, in the country places, of two or more justices of the peace; in the City of London, of the Lord Mayor or an alderman, sitting as justices; in the metropolis, outside the City, of a metropolitan police magistrate; and in certain towns, of a stipendiary magistrate. Offences within class (2) are triable before a jury at quarter sessions, or at the assizes (in London, the Central Criminal Court), or in the High Court (Queen's Bench Division).

Except in the case of a coroner's inquest upon a body found dead, there can be no judicial investigation into an alleged crime until some person is actually charged with its commission. A grand jury is empowered to "inquire of felonies and misdemeanors," although no bill of indictment be before them, but in practice they have long ceased to do so.

Prosecution of Offenders.

Excluding the solemn and rare procedure of impeachment in Parliament for "high crimes and misdemeanors," there are six ways in which a prosecution may be commenced, viz.:—

(1) By arrest of the accused without warrant.

(2) By issue and execution of a warrant of a justice of the peace for the arrest of the accused.

(3) By issue and service of a summons calling upon the accused to appear before the justices and answer the charge.

(4) In cases of perjury, by the Judge before whom the alleged false oath was taken committing the accused for trial.

(5) By the filing of a "criminal information" in the Queen's Bench Division of the High Court, as in the case of libel affecting the public welfare.

(6) By indictment before a grand jury, without any preliminary proceeding before justices.

The ordinary way of commencing a prosecution is by bringing the accused before a magistrate having jurisdiction where the offence was committed, either by warrant or summons, or by arrest without warrant (see *ante*, pp. 56-58). Preferring an indictment before the grand jury without this preliminary step can only be resorted to subject to the provisions of the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17).

When on examination before justices, and on being com-

mitted for trial, a person charged with a misdemeanor is (except in certain cases) entitled as of right to bail; but in cases of felony, bail is in the discretion of the magistrate, and by the Bail Act, 1898 (61 Vict. c. 7), he may dispense with sureties, if, in his opinion, the so dispensing will not tend to defeat the ends of justice.

Punishment of Offenders.

The various penalties for criminal offences which are of common occurrence may be classified as follows:—

(1) Putting the offender under recognizances—that is, requiring him to enter into an obligation (with or without sureties) to pay a certain sum, the condition of the obligation being that if he appear in court on a certain day (say, six months hence), and in the meantime "keep the peace," the recognizance shall be void. (This is "binding over to keep the peace.") The court may order the offender to be imprisoned until he enter into his recognizance, or find sureties, if required.

(2) Fines: the amounts of which, in most cases, are limited by the Acts of Parliament imposing the penalties.

(3) Whipping (if a male).

(4) Subjection to police supervision.

(5) Detention in an industrial or reformatory school.

(6) Imprisonment, which may be: (i) with hard labour; (ii) without hard labour; (iii) as a first-class misdemeanant. Imprisonment under (i) and (ii) may in certain cases be accompanied by solitary confinement, but not for more than one month at a time, or than three months within one year.

(7) Penal servitude, the shortest term of which is three years, consisting of imprisonment and compulsory labour. It was substituted for transportation beyond seas in 1857.

(8) Death, by hanging, for murder.

Although the old penalty of forfeiture for felony is now abolished, any person sentenced to death, penal servitude, or imprisonment with hard labour for not less than twelve months, loses any public employment, ecclesiastical benefice, emolument in any university, college, or other corporation, or any public pension, held by him, unless he be granted a free pardon (33 & 34 Vict. c. 23, § 2).

Committal to Industrial or Reformatory Schools.

When a child apparently under 12 is charged with an offence punishable by imprisonment or a less punishment, but has not been convicted of felony, he may be sent to an industrial school until he shall be 16 (29 & 30 Vict. c. 118, §§ 15, 18).

When a young offender, not less than 12 nor more than 16 years of age, is convicted of an offence punishable with penal servitude or imprisonment, and is also proved to have been previously convicted of a like offence, the Court, in addition to or in lieu of sentencing him, may order him to be sent to a certified reformatory school, to be there detained for a period of not less than three nor more than five years—so, however, that the period be such as will expire at or before the time when the offender will be 19 (56 & 57 Vict. c. 48).

As to Probation of First Offenders Act, under which youthful offenders may under certain conditions be released without punishment, see *ante*, p. 66.

Criminal Lunatics.

As regards crimes by supposed lunatics, a grand jury have no authority to ignore a bill on the ground of insanity (*a*); but upon a true bill being found, the jury impanelled to try the prisoner should be told that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for any crime committed by him, until the contrary be proved to the satisfaction of the jury; and to establish a defence on the ground of insanity it must be clearly proved that at the time of committing the criminal act the accused person was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act, or if he did know it, that he did not know he was doing what was wrong (*b*).

If, upon an accused person being brought up for trial, he appears to be insane, the Court may order a jury to be impanelled to try the question of his sanity; and if the jury find him to be insane the trial will not be proceeded with, but the accused will be detained in custody until the Sovereign's pleasure be known (39 & 40 Geo. III., c. 94, § 2).

If, on trial of an accused person, it appears to the jury that at the time of committing the criminal act charged against him he was insane, so as not to be responsible, according to law, for his actions, the jury are required to return a special verdict to the effect that he was guilty of the offence charged, but was insane, and the prisoner will thereupon be remitted to custody as a criminal lunatic during the Sovereign's pleasure (46 & 47 Vict. c. 38).

(*a*) *R.* v. *Hodges*, 8 C. & P., 195.
(*b*) *R.g.* v. *Macnaughten* (1843), 10 Cl. & Fin., 209.

PART III.

PERSONAL RIGHTS AND REMEDIES.

SECTION I.—INFRINGEMENTS OF PERSONAL RIGHTS.

General Principles.

PERSONAL rights of individuals are very jealously guarded by English law; and even the interruption of a right, however temporary and however slight, is considered by the law to be damaging to the individual entitled, and a proper subject for reparation. Thus, a man who has a right to vote at an election for members of Parliament may maintain an Action against the returning officer for maliciously refusing to admit his vote, though his right was never determined, and though the persons for whom he offered to vote were elected without his vote. This was decided in the celebrated case of *Ashby* v. *White* (*a*), which is usually cited to exemplify the maxim, *Ubi jus ibi remedium* (There is no wrong without a remedy).

On the same footing stand the following cases:—An overseer maliciously omitting a parishioner's name from the rate book, whereby the parishioner was unable to obtain a beer licence; churchwardens maliciously rejecting the Plaintiff's vote at an election of vestrymen; a sheriff delaying to execute a writ, whereby the Plaintiff incurred unnecessary costs; an officer of Customs refusing to sign a bill of entry without payment of an excessive duty; a clergyman arbitrarily and without justification refusing to marry a couple.

(*a*) 1 Smith, L. C. (9th. ed.), 268; 2 Ld. Raym., 938.

Proceedings against Public Officials.

For the prevention of vexatious proceedings against public officials, it has been provided by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), that after 1st of January, 1894, no proceeding may be commenced by a private person against any person for any official act, or in respect of any alleged neglect or default in the execution of any Act of Parliament, public duty, or authority, except within six months next after such act, neglect, or default, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof; and it is also provided that a judgment obtained by the Defendant in any such action shall carry costs, and that where an action for damages is commenced after a tender of amends, or proceeded with after a payment into court, if the Plaintiff does not recover more than the sum tendered or paid, he shall not recover costs incurred after tender or payment.

SECTION II.—ACCIDENTS ARISING FROM NEGLIGENCE.

Compensation under Lord Campbell's Act.

By the Act generally known as Lord Campbell's Act (9 & 10 Vict. c. 93), ("for compensating the families of persons killed by accident"), a widow or children may sue a railway or other company, omnibus or cab proprietor, or any other person causing an accident, for compensation, if such widow's husband, or children's father, or other relative on whom they depended in any way for subsistence, has been killed through the negligence of such persons or companies, or their servants. Moreover, a sister or other relative who depended for subsistence on her brother or other person who may have been killed, may sue for compensation.

Every such action shall be for the benefit of the wife, husband, parent, or child of the deceased person, and shall be brought by and in the name of his executor or administrator; the damages to be apportioned by the jury. (§ 3.)

The statute only gives compensation for direct pecuniary injury sustained: and therefore it must be shown what

pecuniary benefit the person seeking to obtain damages could have claimed, or reasonably expected, from the deceased if he had not been killed (*a*). Loss of an annuity or maintenance, of the benefit of education, of an expected pecuniary provision, are losses for which damages have been given (*b*).

Only one action may be brought, and that must be within twelve months after the death (§ 3); and by an amending Act it is provided that where no action is brought by the executor or administrator within six months from the death of the person killed, then the action may be brought by the persons beneficially interested. (27 & 28 Vict. c. 95, § 1.)

The Defendant may pay a sum into Court as compensation; if this is not accepted by the Plaintiffs, and the Jury afterward find that it was sufficient, the Defendant will be entitled to a verdict upon that issue (§ 2).

Under this Act, damages to the amount of £2875 were recovered in 1896 from a rural district council by the widow and children of a householder who had died from blood-poisoning by sewer gas, owing to an escape of such gas from a ventilating shaft placed by the council as sanitary authority upon the deceased's premises (*c*).

Communication between Railway Passengers and Guards.

Every railway company must provide, in every passenger train which travels more than 20 miles without stopping, such efficient means of communication between the passengers and those in charge of the train as the Board of Trade may approve. Penalty not exceeding £10 for each case of default. Any passenger who makes use of the communicating signal without cause will be liable to a penalty of £5. (31 & 32 Vict. c. 119, § 22.)

If a railway company neglect to provide any such signal or means of communication, and in consequence of the breaking of a tire an accident happens whereby a passenger is injured, and which accident might have been prevented if there had been a means of signal, the Company will be liable in damages for such injury (*d*).

(*a*) *Franklin* v. *S. E. R. Co.*, 3 H. & N., 214; *Sykes* v. *N. E. R. Co.*, 44 L. J. C. P., 191.

(*b*) *Pym* v. *G. N. R. Co.*, 32 L. J. Q. B., 377; *Rowley* v. *L. & N. W. R. Co.*, 42 L. J. Ex., 153.

(*c*) *Smith* v. *King's Norton Rural District Council*, reported in the *Times*, 10th August, 1896.

(*d*) See *Blamires* v. *Lanc. and York. R. Co.*, 42 L. J. Ex., 182.

Gun Accidents with Sportsmen and others.

In all injuries, unintentional or accidental, the point upon which the question of liability turns is, to whether there was *negligence* on the part of the party who caused the injury: if the injury arose from circumstances over which he had no control, he is not liable.

Where the Defendant was uncocking his gun, and the Plaintiff, who was stooping to see it, was wounded by the gun going off, it was held that the Plaintiff might maintain damages for the injury (*a*). So where a sportsman entrusted a loaded gun to be carried by an inexperienced servant girl, and the girl pointed the gun, in sport, at a butcher, drew the trigger and shot and blinded him; it was held that the sportsman was responsible in damages to the butcher (*b*).

Fire from Sparks from Railway Engine.

Where the Defendants used a locomotive engine which, while passing over the line, emitted sparks, although all reasonable precautions had been taken to prevent it from doing so, and the sparks were blown on to a haystack of the Plaintiff, which was burnt; it was held that, as the Act under which the Company was incorporated did not authorise them to use locomotive engines, the Defendants if they chose to use such engines must do so at their peril, and that the Plaintiff had a good cause of Action against them, notwithstanding they had taken all reasonable precaution to prevent injury being caused (*c*).

Horses and Carriages on Highways.

The Queen's highway is quite as much for pedestrians as for drivers of vehicles; and it is the duty of those who drive horses to take care of the public; and not the duty of the public to look out for persons who are driving at an excessive and dangerous pace.

It is the duty of persons driving over a crossing for foot passengers, to drive slowly and cautiously: but it is also the duty of the foot passengers to use due care and caution, so as not to get recklessly among the vehicles (*d*).

The owner of horses is liable for injuries arising from his negligence in leaving them unattended, either with or without

(*a*) *Underwood* v. *Hewson*, 1 Str., 596. (*b*) *Dixon* v. *Bell*, 5 M. & S., 198.
(*c*) *Jones* v. *Festiniog R. Co.*, 37 L. J. Q. B., 214; and see *Smith* v. *L. & S. W. R. Co.*, 40 L. J. C. P., 21.
(*d*) *Williams* v. *Richards*, 3 C. & K., 82; *Cotton* v. *Wood*, 29 L. J. C. P., 333; and see Addison, Torts (6th ed.), 627.

vehicles, in a street or highway (*a*). Also for injuries arising to the Plaintiff by spurring a horse while passing close to the Plaintiff on a highway, whereby the Plaintiff was kicked by the horse (*b*). And also for knowingly driving a mischievous and unmanageable horse which runs against the Plaintiff's carriage (*c*).

But where the Defendant rode in the public streets a horse, which he had just bought, and of which he had had no experience, and which became unmanageable and knocked down the Plaintiff, it was held that these facts afforded no evidence of negligence (*d*).

Ferocious Bulls or other Animals.

The owner of a bull or other animal, which has been known to have run at or attacked any person, and therefore to be dangerous or mischievous, is liable in respect of damage done to any person or property by such animal (*e*). The driving such animals along the highway is gross negligence, for which heavy liabilities are incurred in the event of mischief (*f*).

A person keeping a mischievous animal with knowledge of its propensities is bound to keep it secure at his peril, and if it does mischief negligence is presumed (*g*).

And in an action to recover damages for personal injuries sustained from an elephant exhibited by the Defendants, although the jury found that the Defendants did not know the animal to be dangerous, they were held liable. As the elephant does not belong to a class which, according to the common experience of mankind, is not dangerous to man, an owner keeps such an animal at his own risk, and his liability for damage done by it is not affected by his ignorance of its dangerous character (*h*).

Where a person who keeps an animal of a mischievous nature (*e.g.*, a bull) receives for reward, for agistment, a horse, and such horse during the agistment is injured by the bull, the owner of the bull is liable, whether he knew of its mischievous propensities or not, for it is implied by the contract of agistment that reasonable care will be taken of the horse.

(*a*) *Quarman* v. *Burnett*, 6 M. & W., 499 ; *Lynch* v. *Nurdin*, 1 Q. B., 29.
(*b*) *North* v. *Smith*, 10 C. B. (N. S.), 572.
(*c*) *Martinez* v. *Gerber*, 3 M. & G., 88.
(*d*) *Hammack* v. *White*, 31 L. J. C. P., 129.
(*e*) *Jackson* v. *Smithson*, 15 M. & W., 563.
(*f*) *Hudson* v. *Roberts*, 21 L. J. Ex., 299.
(*g*) *May* v. *Burdett*, 9 Q. B., 101.
(*h*) *Filburn* v. *People's Palace and Aquarium Company* (C. A.) 25 Q. B. D. 258.

Accidents from Obstructions on the Highway.

If a person, being sober, and using ordinary care, be injured in a street, highway, or public footpath, by falling over a heap of earth or stones, or piece of timber and such like, or into a hole or pit; the person who placed the obstruction there, or made the hole, will be liable in damages to the person injured; and if the obstruction were placed or made by workmen, the workmen's employers will be liable (*a*).

Upon the same principle a waterworks company is liable for keeping a fire-plug uncovered in a highway, in consequence of which a horse may place his foot in the plug-hole and be lamed (*b*).

A coal merchant has been held liable for the negligence of his carman who, on delivering coal at a customer's house, left open and unguarded (though only for a few moments) a coal-shoot, or hole in the pavement of a public thoroughfare, whereby a person passing along fell into the hole and was injured (*c*).

Where spiked hurdles had been placed on both sides of a private road by the Defendant, and during the night some person shifted one of the hurdles across the road, and the Plaintiff, who was lawfully passing along the road on a dark night, came into collision with the hurdle and thereby lost the sight of one eye, it was found by the jury that the use of spiked hurdles in such a roadway was dangerous, and this being the primary cause of the accident the Defendant was held liable in damages (*d*).

Traction Engines on Highways.

Where a stack of hay was set on fire by sparks from a traction engine on a highway, but without any negligence on the part of the person using the engine, such person was held liable notwithstanding; on the ground that if a man uses a dangerous machine on the highway he must be responsible for damages caused thereby (*e*).

In a recent case, where the Plaintiff had been injured by the horse he was driving on the highway taking fright at a traction

---

(*a*) *Simmons* v. *Lillystone*, 8 Ex., 431; *Wilkes* v. *Hungerford Market Co.*, 2 Bing., N. C., 281; *Barnes* v. *Ward*, 9 C. B., 392; *Corby* v. *Hill*, 4 C. B. (N. S.), 556; *Chapman* v. *Rothwell*, 27 L. J. Q. B., 315; *Newton* v. *Ellis*, 5 E. & B., 115.

(*b*) *Bayley* v. *Wolverhampton Waterworks Co.*, 30 L. J. Ex., 57.

(*c*) *Whiteley* v. *Pepper*, 46 L. J. Q. B., 436.

(*d*) *Clark* v. *Chambers*, 47 L. J. Q. B., 427.

(*e*) *Powell* v. *Fall*, 49 L. J., 428.

engine, although (on the findings of the jury) he failed to recover compensation from the owners of the engine, the Court of Appeal laid it down that even where the persons responsible for an engine of this sort, in use on the highway, fulfil all the requirements of the statute (see *post*, p. 538), and yet the use of the engine, though without negligence, is calculated to frighten a passing horse of ordinary nerve and courage, the presence of the engine on the highway is a nuisance for which a person suffering therefrom is entitled to recover damages (*a*).

Carrying Dangerous Things along Streets.

Persons carrying edged tools, bars of iron, or other dangerous things along public thoroughfares, must take special care not to injure others; or they, or their masters, as the case may be, will be liable in damages to persons injured thereby (*b*).

Railways crossing Highways.

Where a railway crosses a highway on the level, the company are bound, in addition to putting up gates, &c., as required by statute, to take reasonable precautions to prevent accidents to the public using the highway (*c*). And wherever there are special dangers, the company are bound to take additional precautions (*d*), and on default would be liable for any damage which might occur in consequence of such default.

Seats and Stands for Spectators at Races and other Places.

If a person at a horse race, or other exhibition, or place of public amusement, hire and pay for a seat or stand, which by reason of being insecurely or improperly constructed, breaks down or causes him injury, the person so letting and receiving money for such seat or stand, is liable to an Action for negligence, for the injury and damages sustained, whether he knew of the insecure state of the stand or not (*e*).

Fencing Shafts, Wells, Cellars, &c.

If a mine-owner make a shaft in the surface of the land, he is bound to fence it, so as to prevent danger to the cattle of the owner and occupier of the surface (*f*).

Proprietors and occupiers of areas, cellars, vaults, sewers,

(*a*) *Galer* v. *Rawson*, C. A., W. N. (1889), 180.
(*b*) Addison, Torts (3rd ed.), 375.
(*c*) *Bilbee* v. *L. B. & S. C. R.*, 18 C. B. (N. S.), 584.
(*d*) *Skelton* v. *L. & N. W. R. Co.*, L. R., 2 C. P., 637; *James* v. *G. W. R. Co.*, 2 L. R. C. P., 634, n.
(*e*) *Francis* v. *Cockrell*, 39 L. J. Q. B., 291.
(*f*) *Williams* v. *Groucott*, 4 B. & S., 149.

mining shafts, wells, and such like, adjoining highways, are bound to fence and protect the same ; and if any person suffer an injury or accident by reason of any such being unprotected, the occupier will be responsible in damages to the party injured (*a*).

Where any quarry dangerous to the public is in open or unenclosed land, within 50 yards of a highway or place of public resort dedicated to the public, and is not separated therefrom by a secure and sufficient fence, it shall be kept reasonably fenced for the prevention of accidents, and unless so kept shall be deemed a nuisance under the Public Health Act, 1875. "Quarry" includes every pit or opening made for getting of stone, slates, lime, chalk, clay, gravel, or sand, but not any natural opening. (50 & 51 Vict. c. 19, §§ 3, 4.)

Contributory Negligence.

The rule of law, in all cases of accidents arising from negligence, is, that although there may have been negligence on the part of the Plaintiff, yet, unless he might by the exercise of ordinary care have avoided the consequences of the Defendant's negligence, he is entitled to succeed : if, however, by ordinary care he might have avoided them, he is the author of his own wrong (*b*).

Where, however, the immediate and proximate cause of damage is the unskilfulness or negligence of the Plaintiff himself, he cannot recover (*c*). Thus, some bricklayers, employed by the Defendant, had laid several barrowfuls of lime rubbish before the Defendant's door, and, whilst the Plaintiff was passing in a one-horse chaise, the wind raised a cloud of dust from the lime, which frightened the horse, although usually very quiet ; he consequently started on one side, and would have run against a waggon which was meeting them, but the Plaintiff hastily pulled him round, and the horse then ran over a lime heap lying before another man's door ; by the shock the shaft was broken, and the horse being thus still more frightened, ran away, and, the chaise being upset, the Plaintiff was thrown out and hurt : it was held that, as the immediate and proximate cause of the injury was the unskilfulness of the driver, the action could not be maintained (*d*).

(*a*) *Hardcastle* v. *South Yorkshire Ry.*, 4 H & N., 67 ; *Sibray* v. *White*, 1 M. & W., 435 ; *Bishop* v. *Trustees of Bedford Charity*, 29 L. J. Q. B., 53 ; *Barnes* v. *Ward*, 9 C. B., 392.

(*b*) Per Parke B., *Davies* v. *Mann*, 10 M. & W., 546.

(*c*) *Schloss* v. *Heriot*, 14 C. B. (N. S.), 59.

(*d*) *Flower* v. *Adam*, 2 Taunt., 314.

Ordinary care, it has been observed, must mean that degree of care which may reasonably be expected from a person in the Plaintiff's situation (*a*); and, in the absence of such ordinary care on the part of the Plaintiff, the case will fall within and be governed by the general rule of the English law, that no one can maintain an action for a wrong where he has consented or has *directly* (*b*) and materially contributed to the act which occasions his loss (*c*).

Threshing and Chaff-Cutting Machines.

By an Act of 1878 (41 Vict. c. 12), the drum and feeding mouth of every threshing machine shall at all times during the working thereof be kept sufficiently and securely fenced; and if any person permits any threshing machine belonging to him or used for his service or benefit to be worked without its being so fenced; or if any person in charge of any threshing machine works it or permits it to be worked without its being fenced; or if any person during the working removes the guard used as a fence, every person so offending on any day shall be liable on summary conviction to a penalty not exceeding £5.

By an Act of 1897 (60 & 61 Vict c. 60), it is provided that the feeding mouth or box of every chaff-cutting machine worked otherwise than by manual labour shall be of such construction, or fitted with such apparatus or contrivance, as to prevent the hand or arm of the person feeding the machine from being drawn between the rollers to the knives. Further, the fly-wheel and knives of every such chaff-cutting machine are to be kept sufficiently and securely fenced at all times during working.

Any person working or permitting to be worked any chaff-cutting machine which does not comply with the requirements of the Act, or who, during the working of any such machine, unnecessarily and without due cause removes a guard provided in compliance with the requirements of the Act, is liable on summary conviction to a penalty not exceeding £5.

As to restrictions on the use of steam engines employed in agriculture, and the special provision made in respect of locomotive threshing engines, see *post*, p. 535.

(*a*) *Lynch* v. *Murdin*, 1 Q. B., 29.
(*b*) *Dowell* v. *Steam Nav. Co.*, 5 E. & B., 195.
(*c*) See per Tindal, C. J., in *Gould* v. *Oliver*, 2 Scott (N. s.), 336.

SECTION III.—MARRIAGE OF BRITISH SUBJECTS ABROAD.

Marriage with Foreign Formalities.

The law of England, admitting the broad principle that *locus regit actum*, holds a stranger residing in a foreign land to be amenable to the laws of that land. A marriage between two British subjects temporarily living abroad and in accordance with the *lex loci* will be held good in England, subject to the condition that there must be no contravention of the law of England. Therefore when two British subjects standing in the relation of brother-in-law and deceased wife's sister went through a form of marriage in Denmark, where such marriages are valid, it was held on their return to England that they were not legally married (*a*).

Formalities for Embassy or Consular Marriages.

Wherever a British embassy or legation, or a British consulate, exists in a foreign town, a marriage between British subjects is a comparatively simple matter. Formerly, an "embassy marriage" (under the Act 6 Geo. IV. c. 91) might be said to represent a marriage in England by licence; while a "consular marriage" (under the Consular Marriage Acts, 1849 and 1868) represented marriage before a registrar.

But now, by the Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23), repealing those three Acts, the procedure and formalities for embassy and consular marriages are made uniform; and it is provided that all marriages between parties of whom one at least is a British subject solemnized in any foreign country, in the manner prescribed in the Act, by or before a marriage officer (an ambassador, consul, or other official authorised under the Act), shall be valid in law (§ 1).

In every case of a marriage intended to be solemnized under the Act, one of the parties intending marriage is required to sign a notice, stating the name, surname, profession, condition, and residence of each of the parties, and whether either of them is a minor, and give the notice to the marriage officer within whose district both of the parties have had their residence not less than one week then next preceding (§ 2).

The like consent shall be required to a marriage under the Act as is required by law to marriages solemnized in England; and every person whose consent is so required may, at any

(*a*) *Brook* v. *Brook*, 9 H. L. Cas., 194.

time before the solemnization thereof, forbid it on subscribing his name and residence, and the character by reason of which he is authorised to forbid the marriage: and if a marriage is so forbidden the notice shall be void (§ 4).

Any person, also, may on payment of the proper fee enter with the marriage officer a *caveat* stating the ground of his objection against the marriage of any person named therein (§ 5).

Before a marriage is solemnized, each of the parties has to appear before the marriage officer, and make oath (1) that he (or she) believes that there is not any impediment to the marriage by reason of kindred or alliance, or otherwise; and (2) that both of the parties have for three weeks immediately preceding had their usual residence within the district of the marriage officer; and (3) where either of the parties, not being a widower or widow, is under the age of 21 years, that the consent of the persons whose consent to the marriage is required by law has been obtained, or (as the case may be) that there is no person having authority to give such consent (§ 7).

After the expiration of 14 days after the notice of an intended marriage has been given, if no lawful impediment to the marriage is shown to the satisfaction of the marriage officer, and the marriage has not been forbidden, the marriage may be solemnized, either by another person in presence of the marriage officer, according to the rites of the Church of England or such other form as the parties may adopt, or by the marriage officer, if desired (§§ 8, 11, 12, 24).

The Act also provides (§ 12) for future marriages between parties, one of whom, at least, is a British subject, on board Her Majesty's vessels on a foreign station.

Marriages between British and Foreign Subjects.

The Principal Registrar of the Province of Canterbury has issued a memorandum pointing out that any person intermarrying in England with a French or Belgian subject, although all solemnities required by the law of England may have been observed, is liable to have the marriage declared invalid in a French or Belgian Court (as the case may be), unless the requirements of the law of the foreign country as to the age of the foreign subject, the consent of parents or relatives, and the publication of notices, have been complied with. It is therefore recommended to every British subject proposing to intermarry with a French or Belgian subject, that the assistance of the nearest diplomatic agent or consul should be obtained, with a view to ascertain that the requirements of the foreign law have been duly complied with.

SECTION IV.—ILLEGAL NAVAL OR MILITARY EXPEDITIONS.

If any British subject accepts, without the licence of Her Majesty, any commission or engagement in the military or naval service of a foreign state at war with a foreign state at peace with Her Majesty, or induces any other person to embark on any ship within Her Majesty's dominions, under a misrepresentation of the service in which such person is to be engaged, with the intent that he may accept any such engagement, he will be liable to fine and imprisonment. The master or owner of any ship knowingly taking such persons on board will be liable to like penalties. (33 & 34 Vict. c. 90, §§ 4—7.)

If any person within Her Majesty's dominions, without the licence of Her Majesty, build or cause to be built any ship, with intent that it shall be employed in the military or naval service of any foreign state at war with any friendly state, or equip the same with a like intent or knowledge ; or cause or allow to be despatched any such ship with a like intent, he will be guilty of an offence under the same Act, and the ship and her equipment will be forfeited to Her Majesty (§ 8).

A person building or equipping a ship in any of the cases aforesaid, in pursuance of a contract made before the commencement of war, will not be liable, if upon a proclamation of neutrality being issued by Her Majesty he forthwith give notice to the Secretary of State that he is so building or equipping such ship (§ 8).

The employment of an English steam-tug for towing a prize to the captor's waters is an offence within the Act (*a*).

If any person within the limits of Her Majesty's dominions, and without the licence of Her Majesty, prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state, every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such expedition, will be guilty of an offence against the Act, and be punishable by fine or imprisonment with or without hard labour, for a term not exceeding two years ; and all ships, and their equipments, and all arms and munitions of war, used in or forming part of such expedition, shall be forfeited to Her Majesty (§§ 11, 13).

Any person who aids, abets, counsels, or procures the commission of any offence against the Act will be liable to be tried and punished as a principal offender (§ 12).

(*a*) *Reg.* v. *Elliott*, 41 L. J. Adm. 65.

PART IV.

THE GAME LAWS AND SPORTING.

SECTION I.—PURSUIT, KILLING, AND SELLING OF GAME.

Definition of Game.

Game is defined by various statutes, but it may be taken to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards (1 & 2 Will. IV. c. 32, § 2), to which has been added for the purposes of the Act 25 & 26 Vict. c. 114, § 1, eggs of pheasants and partridges, woodcocks, snipes, rabbits, and eggs of grouse, black, or moor game.

Riding or Shooting upon or over Another's Land.

An Action will lie against a man for riding over the land of another, though no injury be done; for it is an invasion of his property, and a stranger has no right to come there. If a person, without entering upon the land of another, shoots into it and strikes the soil with the shot, he will be guilty of a trespass (*a*). If a person shoot game either on or flying over another's land, he will, it appears, be guilty of a trespass, just the same as if he sent a dog over the land (*b*). Firing at game from a highway is a trespass in pursuit of game (*c*).

Fox-hunters and others.

Persons fox-hunting, coursing, or hare-hunting, are liable as trespassers, for riding over the lands of another; particu-

(*a*) *Pickering* v. *Rudd*, 4 Camp., 219.
(*b*) *Hill* v. *Walker*, Peake, 234.
(*c*) *Mayhew* v. *Wardley*, 14 C. B. (N. S.), 550.

larly after being warned off (*a*) ; and it is no defence that they were in fresh pursuit of a fox (*b*), or of a hare.

Form of Notice to a Trespasser, whether in pursuit of Game or otherwise.

To Mr. ——

I hereby give you notice and warn you to keep off and not trespass on the Abbey Farm, nor on any other lands belonging to me [*or* in my occupation] in the parish of ——, in the county of ——. And I further give you notice that in the event of your trespassing on any of the said lands after the receipt of this notice, an Action at law will be commenced against you.

Dated this —— day of —— 189—. P. W.

After notice in the above form, proceedings may be commenced against any trespasser, whether he has a game certificate or not.

Trespass on Land after Verbal Notice.

Where the Plaintiff, a gentleman of fortune, was shooting on his estate, and the Defendant, an M.P., went up to the Plaintiff and told him he would join his shooting party, and the Plaintiff declined his company and ordered him off his land, telling him not to shoot there, but the Defendant remained on the land and shot there ; the Plaintiff brought an Action against him and recovered £500 damages (*c*).

Property in Game.

If A start a hare in the ground of B, and hunt and kill it there, the property in the hare continues all the while in B ; but if A start a hare in the ground of B and hunt it into the ground of C and kill it there, the property is in A, the hunter, though he is liable to Actions of trespass to the lands both of B and C.

Game started and killed by a person without permission on the land of another, becomes, when killed, the absolute property of the owner of the land, and not of the captor (*d*).

Summary Proceedings for Trespass in Search of Game.

Summary proceedings may be taken before Justices against persons guilty of entering or being, in the daytime, without leave, upon any land in search or pursuit of game or wood-

(*a*) *Earl of Essex* v. *Capel*, Chit. Game L. (2nd ed.), 32 ; *Gundry* v. *Feltham*, 1 T. R., 334.
(*b*) *Paul* v. *Summerhayes*, 18 L. J. M. C., 33.
(*c*) *Merest* v. *Harvey*, 5 Taunt., 441.
(*d*) *Blades* v. *Higgs*, 34 L. J. C. P., 286 ; 11 Jur. (N. S.), 701.

cocks, snipes, quails, landrails, or coneys: the penalty is a fine not exceeding £2, or imprisonment not exceeding two months (*a*)

Any persons to the number of five or more together, committing the like trespass: each person to forfeit not exceeding £5 or imprisonment.

Trespasser on any land refusing to tell his real name and place of abode when required, or giving illusory name or abode, or wilfully continuing or returning upon the land: penalty not exceeding £5 or imprisonment. (1 & 2 Will. IV. c. 32, § 31.)

Five or more persons trespassing on any land, any of them being armed with a gun, and by violence, intimidation, or menace, preventing or endeavouring to prevent any authorised person approaching them for the purpose of requiring them to quit the land or tell their names, and every person aiding or abetting: penalty (each person) not exceeding £5 in addition to other penalties. Trespassing in Her Majesty's forests, parks, chases, or warrens: fine £2. (1 & 2 Will. IV c. 32, §§ 30—33.)

Apprehension of Offenders.

The person having the right of killing the game, or the occupier, or gamekeeper, or servant, &c., may apprehend trespassers in search of game, if they refuse to give their names and places of abode; and may take them before a Justice within 12 hours. (1 & 2 Will. IV. c. 32, § 31.)

No Trespass where a bonâ fide *Right or Title.*

It has always been held as a maxim of law, that when the title to property is in question, Justices have no jurisdiction (*b*), and if Justices proceed and convict the Defendant, the conviction may be quashed on proceeding by *Certiorari* in the Queen's Bench Division. The Defendant must show that what he did was in the *bonâ fide* belief that he had a legal right in or over the property, in which case the Justices have no jurisdiction to convict him. But the Justices are not bound, it seems, to dismiss a summons merely on the assertion of the Defendant that he claims a right. He must give some evidence to indicate that the claim is made *bonâ fide*.

In a case where Justices convicted the tenant or occupier of land of trespass in pursuit of game, on the evidence of a person who had hired the shooting, and who stated before the Justices

(*a*) *Blades* v. *Higgs*, 34 L. J. C. P., 286; 11 Jur. (N. S.), 701.
(*b*) *R.* v. *Burnaby*, 1 Salk., 181; 3 Salk., 217; 2 Ld. Raym., 900.

that he had the exclusive authority of the owner of the land to kill the game, it was held by the Court of Queen's Bench that the Justices were wrong, as there was a *bonâ fide* claim of right on the part of the Defendant; and there was no sufficient evidence that the exclusive right of shooting was in the Complainant; and the conviction was therefore quashed (*a*).

So in cutting down a tree or committing any other kind of trespass to land, if the question of title arise, the proceedings must be by Action at law, and not by summary process (*b*).

Killing or Taking Game Unlawfully.

Killing or taking game without a certificate, or using any dog, gun, net, or other instrument, for the purpose of searching for, or killing or taking game,—penalty £5, double game certificate, and other penalties. (1 & 2 Will. IV. c. 32, § 23.)

Laying poison with intent to injure or destroy game, or causing same to be laid on any ground or highway, where game resort,—penalty, not exceeding £10. (1 & 2 Will. IV. c. 32, § 3.)

Penalty for any person not having permission or the right of killing game, who shall wilfully take out of any nest, or destroy in the nest, the eggs of any birds of game, or of any swan, wild duck, teal or widgeon, or knowingly having such in his possession,—fine not exceeding 5s. for every egg; or imprisonment. (1 & 2 Will. IV. c. 32, § 24.)

Killing or taking game on Sunday or Christmas-day, or using any dog, gun, net, or other engine or instrument for the purpose, —fine, not exceeding £5. (1 & 2 Will. IV. c. 32, § 3.)

Close Times for Game.

Any person killing or taking any partridge between 1st February and 1st September; or any pheasant between 1st February and 1st October; or any black-game (except in the county of Somerset or Devon, or in the New Forest, in the county of Southampton) between the 10th December and 20th August, or any black-game in the county of Somerset or Devon or in the New Forest between the 10th December and 1st September; or any grouse between 10th December and 12th August, or any bustard between 1st March and 1st September, will be liable to a penalty, not exceeding £1 for every head of game killed or taken, or imprisonment. (1 & 2 Will. IV. c. 32, § 3.)

(*a*) *Barker* v. *Davies*, 34 L. J. M. C., 140.
(*b*) *Legg* v. *Pardoe*, 30 L. J. M. C., 108.

Close Time for Hares.

By the Hares Preservation Act, 1892 (55 Vict. c. 8), it shall not be lawful during the months of March, April, May, June, or July, to sell or expose for sale in any part of Great Britain any hare or leveret; and any person who during those months shall so sell or expose for sale any hare or leveret will be liable to a penalty not exceeding 20*s.* including costs.

The Act is not to apply to foreign hares imported into Great Britain.

Buying Game.

Any person not being licensed to deal in game, buying any game of other person than a licensed dealer,—penalty, £5 for every head; or imprisonment. (1 & 2 Will. IV. c. 32, § 27.)

Selling Game.

Any person not having a game certificate or a licence to deal in game, selling or offering for sale any game, to any person whatsoever; or any person authorised to sell game, by virtue of a game certificate, selling or offering for sale any game to any person except to a licensed dealer,—penalty, not exceeding £2 for every head; or imprisonment. (1 & 2 Will. IV. c. 32, § 25.)

Buying or selling any bird of game after the expiration of 10 days from the time at which it becomes unlawful to kill or take such birds, or knowingly having in his possession, house, or control, any bird of game (except alive in a mew or breeding place) after the expiration of 40 days from the time of its becoming unlawful to kill or take game,—fine not exceeding £1 for every head. (1 & 2 Will. IV. c. 32, § 4.)

Offences by Licensed Dealers.

Buying or obtaining any game from any person not authorised to sell game for want of a certificate or licence; or selling or offering for sale any game at his house, shop, or stall, without the required board being affixed outside his house; or affixing or causing to be affixed a board to more than one house; or selling game at any place other than the house, &c., where the board is lawfully fixed,—penalty for each or either offence, not exceeding £10. On conviction the licence becomes void. (1 & 2 Will. IV. c. 32, §§ 28 and 22.)

Any person not being duly licensed to deal in game, assuming or pretending so to be, by affixing a board, or exhibit-

ing any certificate, or by any other device or pretence,—penalty not exceeding £10, or imprisonment. (1 & 2 Will. IV. c. 32, § 28.)

Tenants or Occupiers of Lands killing Game.

Occupiers pursuing, taking, or killing game (other than ground game) upon land without the authority of landlord (where there is a reservation of the game to the exclusion of the occupier), or giving permission to any other person to do so without the landlord's authority,—penalty, not exceeding £2 for pursuing, and £1 for every head killed. (1 & 2 Will. IV. c. 32, § 12.)

Ground Game (Hares and Rabbits).

By the Ground Game Act, 1880 (43 & 44 Vict. c. 47), every occupier of land was given the right to kill and take ground game on the land occupied by him, concurrently with any other person entitled to kill and take ground game on the same land, but subject to the following limitations:—

1. The occupier himself and one other person by him authorised, in writing, shall be the only persons entitled to do so with fire-arms.

2. No person shall be authorised by the occupier to kill or take ground game unless he be a member of his household, resident on the land, a person in his ordinary service on such land, and any one other person *bonâ fide* employed by the occupier for reward in the taking and destruction of ground game.

3. Persons having merely a right of common over such lands, or an occupation for grazing or pasturage for not more than 9 months, are not to be deemed occupiers.

4. In the case of moorlands and uninclosed lands (not being arable lands), the occupier and the persons authorised by him shall exercise their rights only from the 11th of December in one year until the 31st of March in the next year, both inclusive; but this provision shall not apply to detached portions of moorlands of less than 25 acres in extent.

5. Where the occupier of land is entitled otherwise than in pursuance of this Act to kill and take ground game thereon, if he shall give to any other person a title to kill and take such ground game, he shall nevertheless retain and have, as incident to and inseparable from such occupation, the same right to kill and take ground game as is declared by § 1.

All agreements in contravention of the right of the occupier to destroy ground game shall be void (§ 3).

The occupier, and the person duly authorised by him, shall not be required to obtain a game licence for the purpose of killing and taking ground game on the occupier's land; and the occupier may sell the game so taken without a licence. They must, however, obtain a gun licence (§ 4).

No person authorised to kill ground game with fire-arms may do so between the first hour after sunset and the last hour before sunrise. Spring traps, except in rabbit holes, are not to be used; and no poison is to be employed (§ 6).

Letting and Hiring of Rights of Shooting.

An agreement for the hire of shooting over land, with the right of carrying away a portion of the game killed, must be in writing, or it cannot be enforced by either party (*a*).

Where a person hires a house with the exclusive right of shooting and coursing over an estate, such a hiring does not prevent the landlord from cutting down trees and timber on the estate; though such cutting down may destroy several of the plantations and game preserves, and be otherwise prejudicial and injurious to the shooting (*b*).

Owner or Occupier's Right to kill Hares.

Persons in the occupation of enclosed land, or the owner who has the right of killing game thereon, may by himself, or by a person authorised in writing, take, kill, or destroy any hares then thereon, without a certificate. The authority must be limited to one person at the same time, in one parish, and be registered with the Clerk to the Magistrates. Such authority is in force till the 1st of February in the following year, unless revoked. (11 & 12 Vict. c. 29, §§ 1, 2.)

Hare Hunting and Coursing.

Any person may, without a certificate, pursue and kill, or join in the pursuit and killing of hares by hunting with hounds, greyhounds, or beagles. (11 & 12 Vict. c. 29, § 4; 23 & 24 Vict. c. 90, §§ 95, 96.)

Snaring or Taking Hares and Coneys in Warrens.

Any person unlawfully and wilfully, *in the daytime*, taking or killing any hare or coney in any warren or ground, or set-

(*a*) *Webber* v. *Lee*, 51 L. J. Q. B. D., 174.
(*b*) *Gearns* v. *Baker*, 44 L. J. Ch., 334.

ting or using therein any snare or engine for taking such: is liable to a penalty, not exceeding £5. Offenders found committing the offence may be apprehended and taken before a Justice. If there are several offenders, each will be liable to the full penalty.

Taking or killing hares or coneys in warrens *by night* is an indictable misdemeanor, punishable on indictment with fine or imprisonment and hard labour. (24 & 25 Vict. c. 96, § 17.)

Gamekeepers.

Any lord of a manor may, by writing under his hand and seal, appoint one or more gamekeepers to preserve and kill the game within the limits of such manor; and may authorise such gamekeeper, within the said limits, to seize any dogs, nets, or other engines and instruments for the killing or taking game, used by any person not authorised to kill game, for want of a certificate. (1 & 2 Will. IV. c. 32, § 13.)

In Wales the same power of appointing gamekeepers is given to every person entitled to kill game on lands of the clear value of £500, whereof he shall be seised in fee, or otherwise beneficially entitled to in his own right. (1 & 2 Will. IV. c. 32, § 15.)

All appointments of gamekeepers must be registered with the Clerk of the Peace, or they will be invalid. On changing a gamekeeper or revoking his deputation, the licence (or certificate) may be transferred to his successor. (1 & 2 Will. IV. c. 32, § 16.)

Powers and Authorities for Seizing Guns, Dogs, &c.

A gamekeeper cannot seize a gun, unless a trespasser or unauthorised person be using it at the time to kill game (*a*): nor can he seize hounds (*b*). And he is not allowed to *kill* a dog following game within the boundaries of a manor, although the owner of the dog has received notice that trespassing dogs will be shot (*c*).

The seizure of dogs, guns, &c., need not be done by the gamekeeper himself, but may be by another person acting under his *immediate direction;* but not by a person acting under a general authority (*d*).

The guns, nets, &c., seized, may be destroyed; they become

(*a*) *Rogers* v. *Carter*, 2 Wils., 378.
(*b*) *Grant* v. *Hulton*, 1 B. & Ald., 134.
(*c*) *Vere* v. *Lord Cawdor*, 11 East. 568.
(*d*) *Bird* v. *Dale*, 7 Taunt., 570.

the property of the lord of the manor (*a*). But the dogs or guns of a trespassing gamekeeper cannot be seized (*b*).

Gamekeepers Seizing Game.

A gamekeeper may take game from trespassers found by day or night upon land, after first demanding it, and on their refusing to deliver up the same. (1 & 2 Will. IV. c. 32, § 36.)

But he cannot take woodcocks, snipes, quails, landrails, or coneys from such trespassers (*c*).

Suspected Poachers may be Searched by Constables.

Any constable or peace officer is authorised, in any street or highway, to search any person whom he may have good cause to suspect of coming from any land where he may have been unlawfully in search or pursuit of game; or any person aiding or abetting such person, and having in his possession any game unlawfully obtained, or any gun, net, or engine, used for killing or taking game. (25 & 26 Vict. c. 114, § 2.)

Such constables are also authorised to stop and search any cart or other conveyance suspected to contain poached game or nets, &c., and to seize and detain such game, nets, guns, &c. But the constable must not take such person into custody; he should apply to a Justice for a summons. An actual search is not necessary before applying for a summons (*d*).

If, at the hearing, it is proved that such person obtained such game by unlawfully going on any land in search or pursuit of game, or shall have used any such net, &c., for the purpose, or been accessory thereto, such person, on conviction, shall forfeit not exceeding £5, together with such game, guns, nets, &c. Proof that persons were found together on a highway at 6 o'clock A.M., with bags containing a hare and several rabbits, and with nets and stakes, is evidence upon which Justices may convict (*e*).

In order to give the Justice jurisdiction, the game, &c., must be found by the constable on the person of the accused on the highway (*f*): and must be seized whilst in his possession *on the highway*. It cannot be seized elsewhere (*g*).

But if no conviction take place, the game, guns, &c., or their value, must be restored to the person from whom they were seized. (25 & 26 Vict. c. 114, § 2.)

(*a*) *Kingsworth* v. *Bretton*, 5 Taunt., 416. (*b*) *Rogers* v. *Carter*, 2 Wils., 378.
(*c*) Locke, Game Laws (2nd ed.), 45. (*d*) *Hall* v. *Knox*, 33 L. J. M. C., 1.
(*e*) *Evans* v. *Botterill*, 33 L. J. M. C., 50.
(*f*) *Clarke* v. *Crowder*, 38 L. J. M. C., 118.
(*g*) *Turner* v. *Morgan*, 44 L. J. M. C., 161.

Night Poaching.

Any person, by night, unlawfully taking or destroying any game or rabbits in any land, whether open or enclosed; or on any public road, highway, or path, or the sides thereof, or at the openings, outlets, or gates; or by night unlawfully entering or being on any land, whether open or enclosed, with any gun, net, engine, or other instrument, for the purpose of taking or destroying game, is liable as follows:—First offence, not exceeding three months' imprisonment with hard labour, and at expiration to find sureties not to offend again, or further imprisonment for six months; second offence, double the imprisonment and sureties; third offence, an indictable misdemeanor, punishable with penal servitude. (9 Geo. IV. c. 69, § 1.)

Offenders may be apprehended on the spot, and taken before two Justices. (9 Geo. IV. c. 69, § 2.)

Night time is defined to be from the expiration of the first hour after sunset until the beginning of the last hour before sunrise. (9 Geo. IV. c. 69, § 12.)

If 3 or more persons enter land to take game, and one or more are armed with gun or bludgeon, all are liable to penal servitude, not exceeding 14, nor less than 3 years; or imprisonment with hard labour not exceeding 3 years. (9 Geo. IV. c. 69, § 9.)

If offenders are found, and they attack or assault keepers with gun, &c., they are liable to penal servitude for not less than 3 years, nor more than 7; or imprisonment with hard labour.

Stealing Deer.

Any person unlawfully and wilfully coursing, hunting, or snaring, killing or wounding, or attempting to kill or wound any deer in an unenclosed forest, chase, or purlieu, is liable to a penalty: first offence, £50; second offence, felony. Persons having deer, or the head, skin, or parts thereof, in their possession, or any snare or engine for the taking thereof, without being able to give a good account thereof, or setting or using any such engine or snare for taking or killing deer,—penalty, not exceeding £20 or imprisonment. Stealing deer in enclosed land is felony. (24 & 25 Vict. c. 96, §§ 12—15.)

Licences to Deal in Game.

Licences to deal in game (duty £2) are granted by Justices, in special sessions assembled, yearly in July.

A licence cannot be granted to an innkeeper or victualler, or person licensed to sell beer by retail; nor to the owner, guard, or driver of any mail coach, or other vehicle employed

in the conveyance of the mails; nor to a carrier or higgler; nor to persons in the employment of any of the above. (1 & 2 Will. IV. c. 32, § 18.)

A licence to deal in game is not required by a vendor of game killed abroad and imported here for sale (*a*).

Game Licences, or Certificates.

Licences to shoot and kill game are charged (*b*) as under:—

If taken out after the 31st July, and before the 1st November, to expire on the 31st July in the following year, £3.

If taken out after July 31st to expire on the 31st October in the same year, £2.

If taken out on or after the 1st November, to expire on the 31st July following, £2. If for a continuous period of 14 days only, £1.

Servants and gamekeepers of persons having the right to kill game on any lands: in Great Britain, to expire on July 31st, £2; in Ireland, same as for game licences.

Stamp duty for deputation of gamekeeper, 10*s*.

Penalty for shooting without a certificate, £20; besides other penalties under various statutes.

Where a Game Certificate Not Required.

(1) For taking woodcocks and snipes with nets or springes. (2) Nor for taking or destroying coneys by the proprietor of any warren, or of any enclosed ground. (3) Nor by the tenant or occupier of lands, and persons duly authorised by him, for killing and taking hares and rabbits in pursuance of the Ground Game Act, 1880. (4) Nor for the pursuing or killing hares, by coursing with greyhounds, or hunting with beagles or other hounds. (5) Nor for the pursuing and killing of deer by hunting with hounds. (6) Nor for the taking and killing of deer in any enclosed lands by the owner or occupier of such lands, or by his direction or permission.

Gun Licences.

Every person using or carrying a gun elsewhere than in a dwelling-house or the curtilage thereof without a licence in due force is liable to forfeit £10. But the penalty is not incurred by any person in the naval, military, or volunteer service, or the Constabulary or Police, using or carrying any gun in the performance of his duty, or when engaged in target practice.

(*a*) *Pudney* v. *Eccles*, 27 L. J. N. C. [Nov. 1892], 143; and see *Guyer* v. *Reginam*, 58 L. J. M. C., 81.

(*b*) 23 & 24 Vict. c. 90, amended by 46 & 47 Vict. c. 10, §§ 4, 5.

Nor by any person having in force a game certificate, nor by any person carrying a gun belonging to such person for such person's exclusive use; nor by the occupier of any land, or any person by his order using or carrying a gun for the purpose only of scaring birds or killing vermin on such lands, or on any other lands by order of the occupier, such occupier having a game certificate; nor by any gunsmith or his servant, or any person carrying a gun in the ordinary course of his business as a common carrier. (33 & 34 Vict. c. 57, § 7.)

Where a gun is carried in parts by two or more persons in company, each such person will be deemed to carry the gun.

Gun licences are issued by the officers of Inland Revenue: the cost of a licence is 10*s.* yearly. All gun licences expire on the 31st July next following the date thereof. (46 & 47 Vict. c. 10, § 6.)

Wild Fowl.

No game certificate is required to kill wild fowl, whether in a decoy or elsewhere; but a gun licence is required for shooting them. No person may kill wild fowl on private property, without leave of the owner, or the person legally authorised to give permission (*a*).

Snipes and Woodcocks.

Any person using a dog and gun for shooting or killing snipes or woodcocks, must have a game certificate. But snipes and woodcocks may be taken with nets or springes without a game certificate, for such methods of fowling are specifically exempted from game duties.

Wild fowl, snipes, and woodcocks are not "game," for they are not mentioned in the Acts which define the term. (9 Geo. IV. c. 69, § 13; 1 & 2 Will. IV. c. 32, § 2.)

Killing Wild Fowl, &c., on a Sunday.

The killing of game of all kinds, and bustards, on a Sunday or Christmas-day, is prohibited; but as the statute does not mention wild fowl, woodcocks, or snipes, it would seem that persons shooting such birds on those days are not liable to the penalties imposed by the Act. (1 & 2 Will. IV. c. 32, § 3.)

Tenant's Right to kill Snipes, Woodcocks, Quails, Rabbits, &c.

Where the landlord reserves to himself simply the right to kill the game, the tenant may kill snipes and woodcocks, as well as quails, landrails, rabbits, &c. But if the tenant, not having the right to kill game on the occupation, give leave to

(*a*) Chitty, Genl. Pract., 89, 188.

a stranger to kill snipes, woodcocks, &c., the stranger will do so at his peril : if he act on the tenant's leave, he will be liable to a penalty, and, in default of payment, to imprisonment. (1 & 2 Will. IV. c. 32, § 30.)

Trespassers in Pursuit of Snipes, &c.

Persons (not having game certificates) trespassing, by day, in search of snipes or woodcocks, are liable to a fine not exceeding £2, and if such persons trespass together to the number of 5 or more, they are liable to a penalty not exceeding £5 for each person. (1 & 2 Will. IV. c. 32, § 30.)

Wild fowl are not within this enactment : but trespassers in pursuit of wild fowl, by breaking and entering another's land without lawful authority, would be liable for an ordinary trespass (*a*).

Protection of Wild Birds and their Eggs.

By the Wild Birds Protection Act, 1880 (*b*), any person who, between the 1st of March and the 1st of August in any year, shall knowingly and wilfully shoot or attempt to shoot (or use any boat for the purpose) any wild bird, or use any lime, trap, snare, net, or other instrument, for the purpose of taking any wild bird ; or shall expose or offer for sale, or have in his control or possession, after the 15th of March, any wild bird recently killed or taken,—shall on conviction before two Justices, if the wild bird be one of those mentioned in the Schedule, forfeit and pay £1 for every such bird ; and if the wild bird be not included in the Schedule, shall for a first offence be reprimanded and discharged on payment of costs, and for every subsequent offence forfeit and pay for every such bird not exceeding 5*s.* and costs.

Owners or occupiers of land, and persons authorised by them, may kill or take, on such land, birds *not included* in the Schedule (see next page).

A person cannot be convicted of exposing or offering for sale, or of having the possession of any wild bird recently killed, if (i) the killing of such bird (if in a place to which the Act extends) was lawful at the time when, and by the person who killed it ; or (ii) if the bird was killed in some place to which the Act does not extend : and the fact that the bird was imported from some such place shall (unless the contrary is proved) be sufficient evidence. (44 & 45 Vict. c. 51, § 1.)

(*a*) 3 Black. Comm., 209.
(*b*) 43 & 44 Vict. c. 35, as amended by the 44 & 45 Vict. c. 51.

Schedule of Names of Protected Birds.

American Quail	Grebe	Oyster-catcher	Shoveller
Auk	Greenshank	Peewit	Skua
Avocet	Guillemot	Petrel	Smew
Bee-eater	Gull (except	Phalarope	Snipe
Bittern	Black-backed	Plover	Solan goose
Bonxie	Gull)	Ploverspage	Spoonbill
Colin	Hoopoe	Pochard	Stint
Cornish Chough	Kingfisher	Puffin	Stone Curlew
Coulterneb	Kittiwake	Purre	Stonehatch
Cuckoo	Lapwing	Razorbill	Summer Snipe
Curlew	Lark	Redshank	Tarrock
Diver	Loon	Reeve or Ruff	Teal
Dotterel	Mallard	Roller	Tern
Dunbird	Marrot	Sanderling	Thicknee
Dunlin	Merganser	Sandpiper	Tystey
Eider duck	Murre	Scout	Whaup
Fern-owl	Night-hawk	Sea-lark	Whimbrel
Fulmar	Nightjar	Sea-mew	Widgeon
Gannet	Nightingale	Sea-parrot	Wild duck
Goatsucker	Oriole	Sea-swallow	Willock
Godwit	Owl	Shearwater	Woodcock
Goldfinch	Ox bird	Sheldrake	Woodpecker

Any person may require another who is found offending against the Act to give his Christian and surname and place of abode. Penalty on refusal, or giving false name and abode, 10*s*., besides the penalties aforesaid.

A Secretary of State in Great Britain, and the Lord Lieutenant, in Ireland, upon the application of the county authorities, may by order extend, vary, or abolish the close time (43 & 44 Vict. c. 35, §§ 8, 9); and now by Acts of 1894 and 1896 (57 & 58 Vict. c. 24; 59 & 60 Vict. c. 56), an order may in a similar manner be obtained in any county, by the council of an administrative county or the council of a county borough, prohibiting (i) the taking or destroying of wild birds' eggs in any year or years in any place or places within the county; or (ii) the taking or destroying the eggs of any specified kind of wild birds within the county, or any part or parts thereof; or (iii) directing that the Act of 1880 shall apply within the county or any part thereof to any species of wild bird not included in the schedule of that Act. Penalty for taking or destroying eggs contrary to such order, 20*s*. for every egg.

It is further provided by the Act of 1896 (59 & 60 Vict. c. 56) that the powers exercisable by the Secretary of State mentioned in the last preceding paragraph shall extend to the making of an order prohibiting for special reasons the taking or killing of particular kinds of wild birds during the whole or any part of that period of the year to which the protection of

wild birds under the principal Act does not extend, or the taking or killing of all wild birds in particular places during the whole or any part of that period.

The county council are to give public notice every year of any order under the Acts of 1894 or 1896 which is in force in any place within their county, during the three weeks before the period during which the order operates. (57 & 58 Vict. c. 24, § 4; 59 & 60 Vict. c. 56, § 27.)

It is unlawful to kill, wound, take, or sell sand-grouse within the United Kingdom. (51 & 52 Vict. c. 55; 61 & 62 Vict. c. 47.)

Swans.

A swan is a "royal fowl," as whales and sturgeons are "royal fish"; and all those, the property whereof is not otherwise definable, when within the British dominions, belong to the Queen by virtue of her prerogative (*a*). When swans are lawfully taken into the possession of a private person, such person may be said to have a property in them; but if they be at liberty they belong to the Crown by royal prerogative (*b*).

"He who hath a lawful swan-mark, and hath swans lawfully marked, swimming in open and common rivers, has a lawful right to such swans." The swan-mark (which was formerly granted by the Crown) cannot be legally impressed without grant or prescription (*c*). One who has a right to the swan-mark may grant it over, or transfer it, by deed (*d*).

It is felony to take swans which are lawfully marked, though they be at large (*e*). And it is the same as to unmarked swans, if they are domesticated or kept in water near a dwelling-house, or on a manor, or other private property.

At the Reading assizes in 1859, a prisoner was convicted of stealing a swan, the property of the Dyers' Company. The company's charter being put in evidence to prove their title, and the swan-marker having proved the mark, the Judge (Baron Channell) ruled, upon the authority of Lord Hale, that a swan, though at large and a bird *ferœ naturœ*, was under certain circumstances the subject of larceny, if, as was the fact in the present case, it was marked and pinioned.

Persons not having the right of killing game upon any land, nor having permission from the person entitled to such right, who take or destroy the nests or eggs of swans, are liable to a penalty of 5*s.* for every egg. (1 & 2 Will. IV. c. 32, § 24.)

(*a*) Plowd., 315; 7 Co. Rep., 16. (*b*) Woolrych, Game Laws.
(*c*) *R.* v. *Lady Young*, 7 Rep., 18. (*d*) Chit., Game Laws.
(*e*) Dalt. c. 156.

SECTION II.—FISHING AND FISHERIES.

Unlawful Fishing.

Whosoever shall unlawfully and wilfully take or destroy any fish, in any water which shall run through or be in any land adjoining or belonging to the house of any person being the owner of such water or having a right of fishery therein, shall be guilty of a misdemeanor. Committing, or attempting to commit, the like offence, in any water which is private property, in which there shall not be any private right of fishery —fine, not exceeding £5, over and above the value of the fish taken or destroyed. (24 & 25 Vict. c. 96, § 24.)

Any person, by angling in the daytime, unlawfully and wilfully taking or destroying, or attempting to take or destroy, any fish in any such water as first mentioned—penalty, £5 : and if any such water as last mentioned—penalty, £2. (§ 24.)

The owner of the ground, water, or fishery, may, by himself, servants, or others, demand of the offender any rod, line, hook, net, or other implement ; and in case of refusal to give them up, may seize them. But when the tackle is seized by daylight, the offender will be exempt from fine. (§ 25.)

Fishery Boards.

Under the Fresh-water Fisheries Act, 1884 (47 & 48 Vict. c. 11), fishery districts may be formed, and Boards of Conservators appointed, for water frequented by any fresh-water fish.

The Boards may from time to time make by-laws (i) for determining the minimum size of the mesh of nets for fresh-water fish, so that such mesh shall not be less than one inch from knot to knot, measured when wet ; and so that no person shall be compelled to use a mesh larger than three inches from knot to knot, measured when wet ; and so that such by-law shall not extend to any casting or dip-net lawfully used for catching fish for bait ; (ii) for determining the length, size, and description of nets for catching fresh-water fish, and the manner of using the same ; and (iii) for prohibiting the use of any mode or instrument of fishing for fresh-water fish, where it appears to be prejudicial to the fisheries.

They may impose a penalty not exceeding £5 for each offence, and provide for the seizure and forfeiture of nets and instruments used, or of fish found in the possession of any person, in contravention of any such by-law.

No by-law is to apply to fixed nets for taking eels, or to a landing-net used as auxiliary to angling with a rod or line.

Close Times for Fishing and Sales.

No person may fish for salmon between the 1st September and 1st February following, both inclusive; except only with rod and line between the 1st September and 1st November, both inclusive. The close season for putts and putchers is from the 1st September to 1st May. (42 & 43 Vict. c. 26, § 2.)

No person may buy, sell, or expose for sale, or have in his possession for sale, any salmon or part of any salmon, between the 3rd September and 1st February following. But this section is not to apply to dried or pickled salmon, nor to fresh salmon caught beyond the limits of the Act. (§ 3.)

No person in England (Norfolk, Suffolk, and the Thames excepted as regards trout in nets) may fish for, catch, or attempt to catch or kill, or buy, sell, expose for sale, or have in his possession for sale, any trout or char between the 2nd October and the 1st February following, both inclusive; but these dates may be varied by the Conservators; so, however, that the close time does not commence earlier than September 2nd nor later than November 2nd, nor last less than 123 days. (§ 4.)

No unclean or unseasonable salmon, and no salmon caught during the time at which the sale of salmon is prohibited in the district where caught, may be exported or entered for exportation from any part of the United Kingdom between 3rd September and 30th April. (26 Vict. c. 10, § 3; 33 & 34 Vict. c. 33.)

The close season for fresh-water fish is fixed by the Fresh-water Fisheries Act, 1878, between 15th March and 15th June, but this is not to apply to the owner of any private fishery, except as to grayling, nor to persons angling in a several fishery with the leave of the owner. (41 & 42 Vict. c. 49.)

Persons fishing illegally during the close season, or buying or selling fresh-water fish, are liable under the Act to a fine of 40*s.*, or £5 on a second conviction.

The Act of 1878 does not extend to Scotland or Ireland, nor (except as regards buying and selling fish during the close season, and as regards the use of dynamite) to the counties of Norfolk and Suffolk, and the City of Norwich.

Deep-sea oysters are not to be bought or sold between 15th June and 4th August; other oysters not between 14th May and 4th August: unless taken within the waters of some foreign state (*a*), preserved in tins, or intended for oyster cultivation. (40 & 41 Vict. c. 40.)

(*a*) Foreign oysters imported to this country, and stored on an English bank until required for sale, are within this exception (*Robertson* v. *Johnson*, 27 L. J. N. C. [Nov. 1892], 156).

Restrictions on Carriage of Salmon, etc.

Between 3rd September and 1st February, inclusive, no person, under a penalty of £5, may consign or send by carrier any salmon, trout, or char, unless the package be conspicuously marked by painting or branding thereon "salmon," "trout," or "char" respectively. (55 & 56 Vict. c. 50.)

Sizes of Crabs and Lobsters Allowed to be Taken.

Crabs are not to be taken or sold, except for bait fishing, of less measurement than 4¼ inches across the broadest part of the back; nor crabs carrying spawn attached to the tail, or other exterior part of the crab; nor crabs which have recently cast their shells. And lobsters are not to be taken or sold of less measurement than 8 inches from the tip of the beak to the end of the tail, when spread as far as possible flat. Penalty £2 for first offence, £10 for every subsequent offence, and the crabs and lobsters to be forfeited. (40 & 41 Vict. c. 40.)

Prohibition of Poison or Explosives for Destruction of Fish.

Any person who unlawfully and maliciously puts any poison, lime, or noxious material in any water frequented by fresh-water fish, with intent thereby to destroy any of the fish, shall be liable, on conviction, to a fine not exceeding £20, or to imprisonment, with or without hard labour, for a term not exceeding 2 months. (47 & 48 Vict. c. 11, § 7.)

The use of dynamite or other explosive substance to catch or destroy fish, either in a public fishery, or on the sea coast, or at sea within one marine league of the coast, or in any water, whether public or private, is prohibited. Penalty not exceeding £20, or imprisonment not exceeding 2 months. (40 & 41 Vict. c. 65, § 2; 41 & 42 Vict. c. 39, § 12.)

Sea-fishing Service.

By the Merchant Shipping Act of 1894 (57 & 58 Vict. c. 60), British fishing boats, employed in sea-fishing, whether for profit or otherwise, are required to be entered on a Fishing Boat Register (under the direction of the Board of Trade), and to have official papers (§ 373).

No boy under thirteen may enter the fishing service, either as an apprentice or otherwise, and no boy under sixteen may be taken to sea except as an apprentice under the Act. All indentures of apprenticeship must be made in accordance with the requirements of the Act, or they will be void (§ 392); and any person receiving money in consideration of a boy being bound apprentice, or causing any such payment to be made, will be guilty of a misdemeanor (§ 398).

SECTION III.—HORSES AND DOGS.

Soundness in a Horse.

Soundness in a horse has been held to mean perfectness and an entire freedom from disease, complaint, or suffering of any kind, and the full possession of good health (*a*).

Unsoundness.

The law of unsoundness has been laid down as follows:—"If at the time of sale the horse has any disease, which either actually does diminish the natural usefulness of the animal, so as to make him less capable of work of any description, or which, in its ordinary progress, will diminish the natural usefulness of the animal: or if the horse has either from disease or accident undergone any alteration of structure that either, actually does at the time, or in its ordinary effects will diminish its natural usefulness, such a horse is unsound" (*b*).

The following defects and diseases are said to constitute unsoundness in horses (*c*): blindness, blood-spavin, bog-spavin, bone-spavin, broken-back, or chink in the chine, broken-wind, bronchitis, canker, cataract, chest founder, cloudiness of the eye, contraction of the hoof, corns, cough, curb, dropsy, enlarged glands, enlarged hock, false quarter, farcy, founder or fever in the feet, glanders (*d*), grease, grogginess, grunting, gutta serena, or glass eye, kidney dropping, lameness, laminitis, liver disease, lung disease, mallenders and sallenders, mange, navicular joint disease, nerved horse, nose chronic discharge, or nasal gleet, opacity of the lens, ossification of the cartilages, poor evil, pumiced feet, quidding, quittor, ringbone, roaring, saddle-galls, sand-crack, scab, shivering, spavin, sprain, and thickening of the back sinews, strangles, thick wind, thrush, wheezing, whistling, yellows, or jaundice.

Broken knees do not constitute unsoundness, after the wounds are healed, unless they interfere with the action of the knee. Cutting, clicking, and over-reaching are neither vices nor unsoundness. Warts are not unsoundness, unless they impede the natural functions of the horse (*e*).

(*a*) *Best* v. *Osborn*, R. & M., 290.
(*b*) *Per* Parke, B., *Kiddell* v. *Burnard*, 9 M. & W., 670.
(*c*) *See* Oliphant, Law of Horses (4th ed.), p. 74.
(*d*) Any person who brings a glandered horse into a market, or turns it out upon any road-side or unenclosed land, is liable to a penalty of £20. (32 & 33 Vict. c. 70, §§ 57, 58.)
(*e*) Oliphant, p. 109.

Vice.

Vice in a horse is not always unsoundness, but rather a bad habit; but if the vice be shown in the temper of the horse, so as to make it dangerous, or diminish its natural usefulness, the horse may be held unsound (*a*).

The following are deemed vices: backing, biting, crib-biting, jibbing, kicking, rearing, running away, shying, vicious to clean or shoe, weaving, wind-sucking.

Horse-dealing.

The maxim *Caveat emptor* ("Let a purchaser beware") applies very forcibly to a person who purchases a horse; for although the horse turns out unsound, the purchaser has no remedy unless there be evidence of an express warranty or of fraud. And there may be a warranty, although not in writing; but clear proof of it must be forthcoming. It is always the safest course to take a written warranty, by which means the purchaser protects himself from hidden defects.

Warranty of Horse.

A warranty may be either verbal or in writing. It is advisable on receiving a written warranty of soundness to insist on the insertion of the words "warranted sound and free from vice."

On purchasing a horse of a dealer or other person who warrants the animal sound, the buyer should require the seller to sign a receipt for the money in the following form:—

Received of Mr. W. C. Vernon, £52 10s. for the chestnut mare Bess, which I hereby warrant sound and free from vice. [If necessary, add "and quiet to ride, and also to drive in single and double harness."]

Bradford, June 4, 189—. J. C. Thompson.

Warranty of Horse on Trial, or on Conditional Purchase.

If the intending purchaser bargains to have the horse upon trial, or to be returned within a week or month if not approved, the following form of agreement and warranty should be signed by both parties:—

A. B. agrees to purchase of C. D. the brown cob, Napier, at the price of £75, if approved by said A. B., after one week's [*or* month's] trial; and said C. D. hereby agrees to sell upon those terms, and warrants the said horse to be sound and free from vice.

A. B. ———.

Newmarket, Aug. 24, 189—. C. D. ———.

(*a*) Oliphant, p. 74.

Upon a warranty or agreement in either of the above forms, or some equivalent thereof, an Action may be brought, and sustained, in the event of the horse turning out unsound.

A warranty extends to all faults, known and unknown to the seller. A general warranty, however, does not cover patent defects, such as are obvious to the buyer—as if a horse be minus an eye or a tail—because the purchaser may perceive defects such as these; though if he buy without inspection it is different. If a person purchase a horse knowing it to be blind, he cannot sue the seller on a general warranty of soundness, although such seller warranted the animal sound in every respect (*a*).

A mere representation of soundness, or affirmation as to value, does not amount to a warranty unless made as such, and received as such, by the buyer. But in one or two instances a representation, coupled with other acts, has been held a warranty. It is, however, in such case, always a question of fact for a jury.

Horse-dealing on Sunday.

A *horse-dealer* cannot maintain an Action upon a contract made by him on a Sunday for the sale and warranty of a horse. But where *neither of the parties is a horse-dealer*, a contract between them for the sale of a horse is good, though made on a Sunday (*b*).

A person cannot sue on a breach of warranty if he take it on a Sunday from a person *he knows* to be a horse-dealer; nevertheless it is not competent for a Defendant to set up his own breach of the law as an answer to the Action (*c*).

[As to the grounds of these distinctions, see *post*, under "Sunday Trading."]

Breach of Warranty.

Where a breach of warranty occurs, in a horse not turning out sound, it is in general prudent to send the horse back again to the seller immediately on discovering the defects; and if the seller receive it back, then there will be a mutual rescission of the contract; and the buyer will be entitled to the expenses he has been put to for the keep of the horse. If the seller refuse to take the horse back, the purchaser should have it sold by auction for the best price that can be procured: and then bring his Action for the breach of warranty, and to recover the deficiency and expenses, in damages.

(*a*) *Ekins* v. *Tresham*, 1 Lev., 192.
(*b*) *Fennell* v. *Ridler*, 4 B. & C., 406.
(*c*) *Blocksome* v. *Williams*, 1 Taunt., 135.

Puffing at Horse Auctions.

In an Action brought by the Plaintiff to recover the value of a horse sold by him to the Defendant at a public auction, at which auction one of the conditions of sale was, "that each horse should be sold to the highest bidder:" the Plaintiff's groom attended for the purpose of running up the bids, which he did until the horse was knocked down to the Defendant for £29, although the last *bonâ fide* bid was £12, after which the Defendant and the groom were the only bidders; and when the Defendant discovered this, he refused to take the horse. The Plaintiff brought an Action against the Defendant, and was non-suited; the Judge remarking "it was a gross fraud." If the vendor intends to bid by himself or his agent at a sale, it must be so stated in the conditions (*a*).

If a puffer be employed without notice of his being there to protect the interest of the seller, the sale is void (*b*).

Livery-stable Keepers.

A livery-stable keeper cannot detain a horse for his keep as an innkeeper may; because the one is not bound to take the horse in and keep it, whilst the other is (*c*). The livery-stable keeper's remedy is to bring an Action for the keep.

If a horse at livery eat more than its worth, an Action will lie against the owner: but the horse cannot be used or sold (*d*).

A horse standing at livery may be distrained for rent due to the landlord of the stables (*e*).

Duty and Liability of Farrier.

A farrier cannot refuse to shoe a horse, if brought to his shop at a reasonable hour of the day. (14 Hen. VI. c. 18.)

A farrier is liable to an Action for laming a horse in shoeing, because it is the duty of every artificer to exercise his art with reasonable skill, and with due and proper care (*f*).

Licences to keep Dogs.

Licences to keep dogs are to be obtained of excise officers and stamp distributors, and at Post-office money-order offices. The licence for each dog costs 7*s.* 6*d.*

No licence is required for dogs under the age of 6 months, or for dogs kept solely for tending sheep and cattle, or for a dog kept by a blind person for guidance.

(*a*) *Crowder* v. *Austin*, 2 C. & P., 208.
(*b*) *Thornett* v. *Haines*, 15 L. J. Ex., 230.
(*c*) *Smith* v. *Dearlove*, 6 C. B., 132.
(*d*) Moore, 876, 877.
(*e*) *Parsons* v. *Gingall*, 4 C. B., 545.
(*f*) *R.* v. *Kilderby*, 1 Saund., 312.

Any person keeping a dog without a licence, or more dogs than his licence allows, will be liable to a penalty of £5.

Any person having a licence must produce the same within a reasonable time on request by any excise officer or police constable, and deliver it to be examined and read, under a penalty of £5. (30 & 31 Vict. c. 5 ; 40 & 41 Vict. c. 15.)

Savage or Ferocious Dogs.

Any person is entitled to keep a ferocious dog for the protection of his premises, and to turn it loose at night. But a man has no right to put a ferocious dog in such a situation in the way of access to his house, that a person innocently coming there for a lawful purpose, in the daytime, may be bitten or injured by it. And the same with regard to a dog placed near a footpath, though a private one ; a man has no right to put a dog with such a length of chain, and so near the path, that he could bite a person going along it (*a*).

Any person keeping a dog or other animal, in the habit of attacking and biting people, is liable to an Action for damages at the suit of any person who may be bitten or injured. The gist of the liability is, the keeping the animal after knowledge of its dangerous propensities (*b*) : and the knowledge of the master's servant that the dog has mischievous propensities is treated in law as the knowledge of the master (*c*). But in order to support an action it is necessary to show that the dog had, to the Defendant's knowledge, bitten or attempted to bite some person before it bit the Plaintiff ; and in a recent case it was held not sufficient to show that it had, to the Defendant's knowledge, attacked and bitten a goat (*d*).

As soon as a dog is known to be dangerous or mischievous, it is the duty of the person on whose premises the dog is to chain it up, or cause it to be destroyed (*e*).

A Court of Summary Jurisdiction may, upon complaint that a dog is dangerous, and not kept under proper control, order such dog to be destroyed, without giving the owner the option of keeping it under proper control (*f*).

Injuries by Dogs to Sheep and Cattle.

The owner of every dog is liable in damages for injury done

(*a*) *Sarch* v. *Blackburn*, 4 Car. & P., 300.
(*b*) *May* v. *Burdett*, 9 Q. B., 110.
(*c*) *Baldwin* v. *Capella*, 41 L. J. Ex., 167.
(*d*) *Osborne* v. *Chocqueel*, L. R. (1896) 2 Q. B., 109.
(*e*) *Charlwoad* v. *Greig*, 3 Car. & Kir., 48 ; *McKone* v. *Wood*, 5 C. & P.
(*f*) *Pickering* v. *Marsh*, 43 L. J. M. C., 143.

to any cattle or sheep by his dog; and it is expressly provided that it shall not be necessary for the party seeking such damages to show a previous mischievous propensity in such dog, or the owner's knowledge of such previous propensity, or that the injury was attributable to neglect on the part of such owner. The owner may be summoned before a Justice, where the damage done does not exceed £5: if exceeding that amount the remedy is by action. The occupier of the house or premises where a dog doing any such injury was kept at the time of the injury is to be deemed the owner, unless the contrary be proved, or that the dog was kept on the premises without the sanction of such occupier. (28 & 29 Vict. c. 60, §§ 1, 2.)

A dog-owner was held liable under the statute in a case where the dog, in helping to drive out sheep trespassing on the dog-owner's land, worried and killed one of the sheep, although in the case in question the owner of the sheep had been repeatedly warned to prevent his sheep from trespassing (*a*).

Shooting Ferocious Dogs.

The fact of a dog being of a ferocious disposition and being at large, is not sufficient to justify a man in shooting it. In order to justify such an act the dog must be actually attacking the shooter at the time he uses the gun (*b*).

Dangerous Dogs straying on Highways.

A police officer may seize any savage or dangerous dog straying on the highway and not under the control of any person, and may detain such dog until the owner claims it and pays all expenses. Where the owner is known, a letter must be sent informing him that the dog is taken into custody. When the dog has been detained 3 days where the owner is not known, or 5 days where he is known, and the owner does not claim it and pay expenses, the police may cause the dog to be sold or destroyed. (34 & 35 Vict. c. 56.)

If a man harbours a dog not his own, or permits it to be on his premises, and knows its vicious propensities, even though it has not previously bitten anybody, he is liable in damages for any mischief it may do (*c*).

(*a*) In *Grange* v. *Silcock*, *per* Lawrance and Collins, J.J., reported in *Times*, August 4, 1897.

(*b*) *Morris* v. *Nugent*, 7 C. & P., 572.

(*c*) So held by Judge of Clerkenwell County Court in *Simmons* v. *Mclloy*, where damages £50 and costs were obtained (*Standard*, July 12, 1888).

Mad Dogs, and Dogs reputed to be Mad.

If by common report a dog be mad, or has been bitten by another that is mad, it becomes the duty of the owner of the dog so reputed to be very circumspect in the keeping of it. It is not sufficient for a Defendant to say, "I did use a certain precaution." He ought to put it out of the animal's power to do further mischief, or he will be liable in damages for the consequences (*a*).

Muzzling of Dogs.

The Local Authority, if a mad dog, or a dog suspected of being mad, be found within their jurisdiction, may make an order placing such restrictions as they think expedient on all dogs not being under the control of any person, during such period as may be prescribed, throughout the whole or any part of their jurisdiction. (34 & 35 Vict. c. 56.)

Power is also given to the Board of Agriculture to make orders for (i) prescribing and regulating the muzzling of dogs, and the keeping of dogs under control; or (ii) prescribing and regulating the seizure, detention, and disposal (including slaughter) of stray dogs, and the recovery from owners of dogs of expenses incurred in respect of their detention. (52 & 53 Vict. c. 30.)

Injuries to Dogs and Cats from Dog-traps.

Where a Defendant caused traps scented with strong-smelling baits to be placed on his land, so near to the Plaintiff's house as to influence the instinct of the Plaintiff's dogs and cats, and draw them irresistibly to destruction; it was held that the Defendant was answerable to the Plaintiff for the injuries sustained, although he had no intention of injuring the Plaintiff, and meant only to catch foxes and vermin (*b*).

Veterinary Surgeons.

By the Veterinary Surgeons Act, 1881 (44 & 45 Vict. c. 62), provision was made for the registration of members of the Royal College of Veterinary Surgeons, and penalties imposed on persons falsely representing themselves to be fellows or members of the College, or using the initial letters thereof after their names.

If any person not qualified under the Act take or use the title of Veterinary Surgeon or Veterinary Practitioner, he is liable to a penalty of £20. Unqualified practitioners are not entitled to recover their fees or charges.

(*a*) *Jones* v. *Perry*, 1 Esp., 433.
(*b*) *Townsend* v. *Wathen*, 9 East, 277.

SECTION IV.—WAGERS, BETS, GAMING, ETC.

Where Moneys Recoverable at Law.

Formerly wagers and bets which were not contrary to the principles of morality, public decency, or sound policy, might be recovered at law. But now all bets and wagers, though made upon a lawful game, are invalid by statute (*a*). All *contracts or agreements* by parol or writing, by way of *gaming or wagering*, are *null and void;* and no Action can be brought for recovering any sum of money, stakes, or other valuable thing alleged to be won upon any wager; but the statute does not apply to "any subscription or contribution, or agreement to subscribe or contribute for or towards any plate, prize, or sum of money to be awarded to the winner or winners of any lawful game, sport, pastime, or exercise." (8 & 9 Vict. c. 109, § 18.)

Accordingly the stakes of a cricket-match, boat-race, horse-race, and such like, may be recovered of the stakeholder, who unlawfully detains them after notice to pay them over to the party entitled to them (*b*). And if a person deposit money with a stakeholder by way of wager, and not as a stake, he may recover the money back if, before the event comes off, he gives notice to the stakeholder that he has broken off the bet, and that he requires him to return the money (*c*).

Where the loser of an illegal wager repudiated the transaction and demanded of the stakeholder the return of his money, after the event had come off, but before the stakes had been paid over; it was held that the authority of the stakeholder was thereby put an end to; and on his refusal to return the money, the loser might recover it in an Action at law (*d*).

Where a stakeholder delivered over the stakes of a boat-race to the person to whom the referee awarded them as the winner; in an Action against the stakeholder, it was held, that as there was no such race or start as would have justified the referee in awarding the stakes, his decision was void (*e*).

Where the stakes of a walking-match had been deposited with the Defendant as stakeholder, and, after the race, the Plaintiff (the defeated party) considering that he had not had fair play, gave written notice to the stakeholder not to pay over

(*a*) See *Savage* v. *Maddox*, 36 L. J. Ex., 178; *Parsons* v. *Alexander*, 24 L. J. Q. B., 277.
(*b*) *Reg.* v. *Ashton*, 22 L. J. M. C. 1; *Applegarth* v. *Colley*, 10 M. & W. 733.
(*c*) *Varney* v. *Hickman*, 5 C. B., 271; *Martin* v. *Hewson*, 24 L. J. Ex. 174.
(*d*) *Hampden* v. *Walsh*, 45 L. J. Q. B. D., 238.
(*e*) *Sadler* v *Smith*, 38 L. J. Q. B., 91.

the stakes, the stakeholder, however, disregarded the notice and paid the money over to the alleged winner: it was held that the Plaintiff was entitled to recover of the stakeholder the money he had so deposited with him (*a*).

If money won at play has not been paid, the winner cannot maintain an Action for it against the loser. And money lost at play cannot be recovered back again by the loser; but if there was cheating, the cheater may be prosecuted.

Promissory notes, bills of exchange, mortgages, and other securities given to secure money won at, or lent for, play, are *not* absolutely void, but are treated in law as made for an illegal consideration only; they are therefore void only as between the parties to them, and those who take them with notice of the illegality, or after they are overdue (*b*). Therefore if A accept a bill or note drawn upon him for a sum of money lost at play, and the drawer afterwards dispose of the bill to B, a person who knows nothing of the illegal consideration, B may legally sue A upon the note.

Where two persons joined in a wager, and won, and the whole amount was paid to one of them, it was held that the other was entitled to recover his share as money received for his use (*c*). It has been decided, also, that where an agreement was made between two persons that one of them—as agent of the other, the principal—should employ the principal's money in betting on horse races, and pay over his winnings, such an agreement was not an illegal contract within the statute 8 & 9 Vict. c 109, and was enforceable in law (*d*).

And where an agent was employed to make bets on commission for another, and refused to pay over what he received as winnings, it was held that the principal was entitled to recover the winnings as money received for his use, the provisions of the statute invalidating only the contract of wagering (*e*). Further, in a case where a commission agent had been employed to make bets in another person's name, and had paid the sums lost in so betting for his principal, although before he paid them his principal had repudiated the bet, it was held by the Court of Appeal that the agent was entitled to recover from his principal the sums so paid (*f*).

But, in future, if any such agent pay for his principal money

(*a*) *Diggle* v. *Higgs*, 46 L. J., C. L. D., 721.
(*b*) *Cook* v. *Stratford*, 13 M. & W., 379.
(*c*) *Johnson* v. *Lansley*, 12 C. B., 468.
(*d*) *Beeston* v. *Beeston*, L. R., 1 Ex. D., 13; 45 L. J., 230.
(*e*) *Bridger* v. *Savage*, L. J., Q. B. D., 464.
(*f*) *Read* v. *Anderson*, 13 L. R., Q. B. D., 779

lost in betting on the latter's account, he will not be able to recover the payment; it being provided by the Gaming Act, 1892 (55 Vict. c. 9), that any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract rendered null and void by 8 & 9 Vict. c. 109, or to pay any sum of money by way of commission or reward in respect of any such contract, shall be null and void, and no action shall be maintained to recover any such sum (*a*).

Where, in the case of speculative transactions in stocks and shares (as, for instance, with advertising "bucket shops"), both parties to contracts for the sale and purchase of stocks intend that no stocks shall be delivered, and that "differences" only shall be accounted for, the mere fact that the contracts provide that either party may require delivery or receipt (as the case may be) of the stocks, does not prevent them from being contracts by way of gaming and wagering within the Act 8 & 9 Vict. c. 109, § 18, and therefore void. But in such transactions securities deposited by one of the parties with the other to secure the payment of "differences" are not deposited "to abide the event" within the meaning of § 18, and are therefore recoverable (*b*).

Betting and Loans (Infants) Act, 1892.

By this Act (55 Vict. c. 4) it is rendered a penal offence to incite infants ("meaning and including any minor or pupil") to make bets or wagers, or to borrow money.

If anyone, for the purpose of profit, sends to an infant any circular, notice, advertisement, letter, telegram, or other document inviting the person receiving it to make any bet or wager, or take any share in any betting or wagering transaction, or to apply for information as to any race, fight, game, sport, or other contingency upon which betting or wagering is generally carried on, he shall be guilty of a misdemeanor, and be liable, if convicted on indictment, to imprisonment for a

(*a*) It has been held by a Divisional Court, on appeal from a County Court, that the Act (which is dated 20th May, 1892) is not retrospective, so that an Action may be brought to recover an amount paid by a betting agent prior to the Act coming into operation (*Knight* v. *Lee*, L. R. [1893] 1 Q. B., 41).

But in another case, where the Defendant at the request of the Plaintiff had paid money to four men, due to them from the Defendant on betting transactions, but there was no evidence that the Plaintiff knew that the payments were for bets, it was held that he could not recover the amount from the Defendant (*Tatam* v. *Reeve*, L. R. [1893] 1 Q. B., 44).

(*b*) *Universal Stock Exchange* v. *Strachan*, H. L. E. (1896) A. C. 166.

term not exceeding three months, or to a fine not exceeding £100, or to both; and if summarily convicted, to imprisonment, for a term not exceeding one month, or to a fine not exceeding £20, or to both (§ 1).

If anyone, for the purpose of profit, sends to an infant any document which invites the person receiving it to borrow money, or to apply for information or advice as to borrowing money, he shall be guilty of a misdemeanor, and be liable to fine and imprisonment, as under sect. 1 (§ 2).

If any such document as in the preceding sections mentioned is sent to any person at a place of education, and such person is an infant, the person sending the same shall be deemed to have known that such person was an infant, unless he proves that he had reasonable ground for believing the contrary (§ 3).

Soliciting an infant, except under the authority of any court, to make an affidavit or statutory declaration in connection with a loan, will render the person so acting liable to fine and imprisonment, as under secs. 1 and 2 (§ 4).

If any infant, who has contracted a loan which is void in law, agrees after he comes of age to pay any money in respect of any such loan, such agreement will be void absolutely as against all persons whomsoever. (§ 5).

Races in the Metropolitan District.

Horse-races are unlawful at any place within a radius of 10 miles from Charing Cross, unless in a place duly licensed. Persons taking part in horse-racing at such unlicensed places will be liable to a penalty of £10: and the owner or occupier of the land or place will be guilty of a misdemeanor, punishable with fine or imprisonment: and every horse-race held in contravention of the Act will be deemed a nuisance. (42 & 43 Vict. c. 18.)

Cheating at Games, Races, &c.

Every person who shall by any fraud or unlawful device, or ill practice in wagering on the event of any game, sport, pastime, or exercise, win from any other person to himself or others any sum of money or valuable thing, shall be deemed guilty of obtaining the same by a false pretence with intent to cheat or defraud such person. (8 & 9 Vict. c. 109, § 17.)

Playing with false dice is an indictable offence.

Money Lent for Play.

Money lent to play at whist or cribbage, or any game not prohibited by Act of Parliament, may be recovered by Action

against the borrower, provided the loan did not form part of any wagering or gaming contract (*a*).

If a publican lend money to a guest to enable the latter to play at a game prohibited by law, or to lay bets or wagers on games of chance, the money so lent cannot be recovered (*b*).

Where a man who had lost money at play got a friend to pay the money for him, the latter was held entitled to recover the money from the party at whose request he advanced it, although he knew perfectly well at the time he advanced the money that it was lent to pay a gambling debt (*c*). [*Cf.* Gaming Act, 1892, and decisions thereon, *ante*, p. 140.]

Lotteries, Sweepstakes, &c.

Lotteries have been declared by Act of Parliament to be public nuisances, and every person who exercises or opens a lottery is liable to a penalty of £500. Also a penalty of £20 is imposed upon every person who shall play, throw, or draw at any lottery. Also a penalty of £500 upon any person who knowingly suffers his house or room to be used for the purposes of a lottery (*d*).

Where a race for the Derby was about to be run, and certain persons called subscribers paid to the Defendant a subscription of £1 each, upon the understanding that he should pay £100 to that subscriber whose name should first be drawn out of a box after the name of the winning horse, it was held that the transaction was a lottery, and illegal by statute (*e*).

The sale of packets of tea, with "prize coupons" attached of uncertain value, although the tea was worth the money charged, has been held illegal, as constituting a lottery (*f*).

But where a "mutual society" was formed to make advances to its members on loan, out of moneys contributed by the members in periodical subscriptions, the members who were to receive the advances or "appropriations" being chosen from time to time by drawing lots, it was held that such a society, being constituted for the general benefit of all its members in turn, did not come within the prohibition of the Lottery Acts (*g*).

(*a*) *McKinnell* v. *Robinson*, 3 M. & W., 434.
(*b*) *Foot* v. *Baker*, 6 Scott (N. S.), 309.
(*c*) *Knight* v. *Camber*, 15 C. B., 564.
(*d*) 10 & 11 Wm. III. c. 17; 8 Geo. I. c. 2; 12 Geo. II. c. 28; 42 Geo. III. c. 119.
(*e*) *Allport* v. *Nutt*, 1 C. B., 974; *Gatty* v. *Field*, 9 Q. B., 431.
(*f*) *Taylor* v. *Smethen*, 11 L. R. Q. B. D., 207.
(*g*) *Wallingford* v. *Mutual Society*, L. R., 5 App. Cas., 685.

Art Union Lotteries.

Art-union lotteries are not illegal when constituted in the manner provided by 9 & 10 Vict. c. 48, and so long as their proceedings are carried on in good faith for the encouragement of the fine arts; it being required by the statute either that a royal charter, incorporating the association, shall have been obtained, or that the deed or instrument constituting the association, and its rules and regulations, shall have been approved by a Committee of the Privy Council (that is, in practice, by the Board of Trade).

"Missing Word" Competitions.

This form of newspaper enterprise has been declared to be illegal, as a lottery, under 42 Geo. III. c. 119, § 1, and any competitor may maintain an action to recover his contribution provided he give notice of his claim before the distribution of the fund (*a*).

Betting-houses.

Betting-houses are declared to be public nuisances. Any person exhibiting or publishing, or causing to be exhibited or published, any placard, advertisement, &c., making it appear that any house, office, room, or other place is kept or used for the purpose of making bets, exhibiting lists for betting, or otherwise inducing persons to resort there for the purpose of betting, is liable on conviction before two Justices to a penalty of £30 and costs, or imprisonment not exceeding 2 months. Houses suspected of being used as betting or gaming-houses may be searched, on procuring a warrant of a Justice of the Peace. (16 & 17 Vict. c. 119, §§ 11, 12.)

Where a professional bookmaker was charged with "unlawfully using a certain place, to wit an inclosure situated upon a race-course, for the purpose of betting with persons resorting thereto, on contingencies relating to horse-races," it was held on a case stated by Justices, that the inclosure was a "place," and was used for the purpose of the respondent "betting with persons resorting thereto," within the meaning of the Act, and that accordingly the bookmaker was liable to be convicted for an offence thereunder (*b*).

But in another case it has been held by the Court of Appeal (*per* Lord Esher, M.R., and four other Judges, Lord Justice Rigby dissenting) that a similar "inclosure" cannot be deemed

(*a*) Per Stirling, J., in *Barclay* v. *Pearson*, L. R. (1893), 2 Ch. D. 154; 68 L. T., N. S., 709.

(*b*) *Hawke* v. *Dunn* (1897), 1 Q. B., 579.

a "place" within the meaning of the Act, thus overruling the decision in the case of *Hawke* v. *Dunn* (*a*).

In a former case, it was held that the owner or occupier of a house, office, room, &c., might be convicted for knowingly permitting a person, who was not the occupier or keeper of the premises, to use his house, office, or place for the purpose of betting with persons resorting to it; and also (in the same case) that a cricket-ground was a "place" within the meaning of the Act (*b*).

But where the occupier of a house—who had used it for the purpose of betting with persons who wrote or telegraphed to him (without coming to the house), asking him to bet with them—was convicted under the statute, the conviction was quashed by the Judges, who held that the word "resorting," as used in the Act, must be construed in the ordinary sense of actually and physically resorting (*c*).

If any letter, circular telegram, placard, hand-bill, card, or advertisement, be sent exhibited, or published, whereby it is made to appear that any person will give information or advice as to any bet or wager, event or contingency, relating to a horse-race or any other race, or any fight, game, sport, or exercise, or will make on behalf of any other person any such bet or wager, with intent to induce any person to apply to any house, office, room, or place, or to any person with the view of obtaining information or advice for the purpose of any such bet or wager, event or contingency, or invite any person to take any share in any such bet or wager, every person sending any such, or causing it to be sent, exhibited, or published, will be liable to a penalty not exceeding £30 and costs, or 2 months' imprisonment, with or without hard labour. (37 Vict. c. 15.)

Betting and Gaming in Street or Highway.

Every person playing or betting by way of wagering or gaming in any street, road, highway, or other open and public place, at or with any table or instrument of gaming, or any coin, card, token, or other article used as an instrument of gaming, shall be deemed a rogue and a vagabond, and may be punished accordingly, or in lieu of such punishment fined 40*s.* for first offence, and £5 for any such second or subsequent offence. (36 & 37 Vict. c. 38.)

(*a*) *Powell* v. *Kempton Park Racecourse Company*, reported in *Times*, July 6, 1897.

(*b*) *Haig* v. *Corporation of Sheffield*, 44 L. J. M. C., 17.

(*c*) *The Queen* v. *Brown*, reported in *Times*, November 19, 1894.

PART V.

MERCANTILE AND COMMERCIAL LAW.

SECTION I.—STOCK EXCHANGE LAW AND PRACTICE.

Share-brokers and Stock-brokers.

EVERY man who employs a stock-broker or share-broker to transact business for him is bound by the rules of the Stock Exchange, and the established mode of transacting business, whether he know of the usage or not (*a*).

Persons entering into contracts on the footing of the usage in force on the Stock Exchange can only be bound by the contract as qualified by usage; they are entitled to any immunity which the usage affords, and the extent of their liability must be determined by reference to the usage; but they must adopt the usage in its entirety; they cannot claim the benefit of such part as may be favourable to their purpose, and reject that which is unfavourable (*b*). But a person dealing with a Stock-broker on the Stock Exchange is not bound by a custom of an unreasonable character, unless it be shown that he was aware of it and agreed to be bound by it (*c*).

But it has been held that the usage of Lloyd's is not such a usage as binds a principal, ignorant of the usage, who employs an insurance broker to do the business there for him (*d*).

If a share-broker, directed to buy shares, buy what is ordi-

(*a*) *Sutton* v. *Tatham*, 10 A. & E., 27; *Pollock* v. *Stables*, 12 Q. B., 774.

(*b*) *Grissell* v. *Bristowe*, 38 L. J. C. P., 10; *Coles* v. *Bristowe*, 38 L. J. Ch., 81.

(*c*) *Blackburn* v. *Mason* (*Times*, 1803), L. R. 286; and see *Cockx* v. *Eshelby*, 12 App. Cas. 271.

(*d*) *Sweeting* v. *Pearce*, 30 L. J. C. P., 109.

narily bought and sold in the stock market as shares, he has fulfilled his commission, and he cannot be made responsible for the fraud or misconduct of parties who may have issued the shares without authority (*a*).

If a share-broker, employed to effect a sale of shares or scrip, sells pursuant to his authority, and the principal neglects to deliver the shares, and the broker is consequently obliged to buy other shares in the market, at an advanced rate, for the fulfilment of the contract of sale, such share-broker is entitled to recover from the principal, his employer, all the damages he has sustained, in addition to all the costs and expenses incurred by him in the execution of the commission. Whenever the share-broker has been compelled by the custom of the Stock Exchange to make good the default of the principal, he has a remedy over against the latter. Therefore, if he pays calls on shares which he has purchased for his principal, he may recover the amount from the latter (*b*).

Time Bargains, Gambling in the Funds, &c.

Time bargains in the nature of wagers on the future price of stock are absolutely void. Thus, a bargain for the sale and purchase of stock or shares to be delivered or transferred to a future day, where no purchase money is intended to be paid on the one hand nor stock transferred on the other, but the parties intend to settle the difference between the price at the time the contract is made and the price on the day of settlement, is a contract in the nature of a wager within 8 & 9 Vict. c. 109, § 18 (see *ante*, p. 138), and cannot be enforced (*c*).

As to the rights of the parties in respect of securities deposited by one with the other, see *ante*, p. 140.

Bought and Sold Notes.

When sales are effected through the medium of brokers acting between the parties buying and selling, the broker is the agent of both parties, and as such may bind them by signing the same contract on behalf of buyer and seller. If he does not sign for both parties, neither will be bound.

Where the broker delivers different notes of the contract to each of the contracting parties, and there is no signed entry in his books to cure discrepancy, there is no valid bargain (*d*).

It is the duty of the brokers to make a memorandum of the

(*a*) *Bayliffe* v. *Butterworth*, 1 Ex., 425.
(*b*) *Taylor* v. *Stray*, 26 L. J. C. P., 287.
(*c*) *Grizewood* v. *Blane*, 11 C. B., 538; *Thacker* v. *Hardy*, 48 L. J. C. P., 46.
(*d*) *Grant* v. *Fletcher*, 5 B. & C., 437.

contract in their books; and transcribe therefrom the bought and sold notes (*a*).

A broker has only a *special* authority, not a general one; and if you employ a broker to buy one kind of goods, and he buy another, you are not bound by his act (*b*).

Sale and Transfer of Stock and Shares.

Where a bargain has been made for the sale of a certain number of shares in a joint-stock company, the property in the shares passes in equity to the purchaser, and the latter becomes entitled to a decree for specific performance when the time for making the transfer arrives (*c*).

According to the practice of the Stock Exchange, the broker who buys shares prepares the transfer deed, and tenders it to the selling broker for execution: and pays the price on the transfer being returned to him executed by the vendor, and accompanied by the vendor's certificates of proprietorship. It is not the duty of the vendor, or of the selling broker, to get the transfer registered. Until this is done, however, and the transfer has been registered, and the new certificates granted, the purchaser's title to the shares is incomplete (*d*).

In case of the sale of scrip or letters of allotment of shares, no right of property in any particular scrip or shares passes to the purchaser until actual delivery: and the vendor will fulfil his contract by procuring and tendering to the purchaser any scrip that may be in the market. But a purchaser is not bound to accept shares, or scrip, or securities of a different kind from those he bargained for and agreed to buy (*d*).

Brokers and Money-lenders dealing with Customers' Securities.

If a broker deposit with a bank, as security for an advance to himself, negotiable securities belonging to a customer, and afterwards become insolvent, the bank will not be liable to the customer of the broker, if when the advance was made there was nothing to show that the broker was not dealing with his own securities (*e*).

But where a money-lender obtains from a bank a loan on negotiable securities, the bank will be held to have notice given them, by the nature of the money-lender's business, of the infirmity of his title to the securities deposited (*f*).

(*a*) Addison, Contracts (8th ed.), 1009.
(*b*) *Pitts* v. *Beckett*, 13 M. & W., 747.
(*c*) *Duncuft* v. *Albrecht*, 12 Sim., 199.
(*d*) Addison, Contracts (8th ed.), 1011, 1012.
(*e*) *London Joint Stock Bank* v. *Simmons*, H. L. (1892) A. C., 201.
(*f*) *Earl of Sheffield* v. *London Joint Stock Bank*, L. R., 13 A. C., 333.

SECTION II.—JOINT-STOCK COMPANIES.

Incorporation of Companies.

By the Companies Act, 1862 (25 & 26 Vict. c. 89) no company, association, or partnership consisting of more than 10 persons can be formed for the purpose of carrying on the business of banking, unless registered as a Company under that Act; nor any Company of more than 20 persons for carrying on any other business, unless registered under the Act or formed under some other Act. Any seven or more persons may, by complying with the requisitions of the Act, form a company with or without limited liability.

A copy of the "Memorandum of Association" with "Articles of Association" annexed must be forwarded to every member at his request, on payment of 1*s.*, and if the company make default in sending they incur a penalty.

Memorandum of Association.

This document is required to state (among other things) (i) the name of the company; (ii) in what part of the United Kingdom the registered office is to be situate; (iii) the objects of the company; (iv) that the liability of the members is limited; and (v) the capital of the proposed company.

It has to be subscribed by seven persons at least, each of whom must write opposite his name the number (not less than one) of shares taken by him, and each signature must be witnessed.

The Memorandum may be wholly in writing, or (except as regards signatures) it may be printed, or partly printed and partly in writing.

In the case of a company limited by guarantee (see *post*, p. 151) the Memorandum of Association is to contain a declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves such amount as may be required, *not exceeding a specified amount*.

The Memorandum is to have the same effect as a deed containing a covenant binding on the heirs, executors, and administrators of the person executing it; and will thus bind those who inherit his lands or take them by his will, as well as his executors or administrators. (25 & 26 Vict. c. 89, § 11.

Articles of Association.

The Articles contain the regulations for the management of the company and the conduct of its business. In the case of a company limited by shares there is no obligation to register Articles of Association, but if a company be registered without articles a very complete and full set of regulations, which are set out in Table A in the First Schedule to the Act of 1862, are to be "deemed to be the regulations of the company," and its affairs will have to be administered accordingly (*a*).

A third alternative is to have a short set of Articles of Association, supplementing or modifying those of Table A in any particulars in which the regulations of Table A are unsuitable or deemed not desirable, but otherwise leaving Table A to operate.

As a general rule, it is desirable for a company to have its own specially-framed Articles of Association, but there are many cases where Table A, with or without special modifications or additions, may be adopted with advantage.

The Articles of Association (if any) must be printed, and must be signed by the subscribers of the Memorandum, whose signatures must, in this case also, be witnessed.

The Memorandum and the Articles of Association must each bear a 10s. deed stamp. (§ 15.)

Register of Members.

The Register of members must be kept at the registered office of the Company, and be open to the inspection of members *gratis*, and to any other person on payment of 1*s.*; and any person may require a copy thereof, or of any part thereof, on payment of 6*d.* for every hundred words.

Registration of Company.

Every company registered under the Act must, before carrying on business, file with the Registrar of Joint-Stock Companies, at Somerset House, a notice of the situation of its registered office, and subsequently of any change therein (§§ 39, 40).

Every company having a capital divided into shares or stock must file annually with the Registrar a summary of its capital and list of its members made up to the 14th day after the first ordinary general meeting in each year, and to be registered within seven days after such 14th day (§§ 26, 27).

(*a*) Copies of the Act containing the schedule may be obtained (direct or through any bookseller) of Messrs. Eyre and Spottiswoode, Her Majesty's Printers, East Harding Street, London, E.C.

But this provision does not apply to a company registered pursuant to § 23 of the Companies Act, 1867, and holding a licence from the Board of Trade to dispense with the word "Limited" as part of its name.

First General Meeting.

Every company formed under the Act must hold a general meeting within four months after its Memorandum of Association is registered. The first return of capital and members is to be made up to the 14th day after this meeting, and registered within seven days of such 14th day. (25 & 26 Vict. c. 89, § 49; 30 & 31 Vict. c. 131, § 39.)

Special Resolutions.

By means of "special resolutions" of the members—for which resolutions (i) a first and subsequently (ii) a confirmatory meeting are required, at an interval of not less than 14 days, nor more than one calendar month—certain changes in the constitution of a company may be made, including change of the name subject to sanction of Board of Trade, alteration of object subject to sanction of the Court, increase or reduction of capital where not already provided for, consolidation of shares or conversion thereof into stock, etc., etc.

A copy of every special resolution passed by a company must be *printed* and forwarded to the Registrar of Joint-Stock Companies within 15 days from the date of the confirmation of the resolution. (25 & 26 Vict. c. 89, §§ 51, 52.)

Special resolutions can only be made and carried out in strict conformity with the regulations of the Act of 1862 (§ 51), and in case of an alteration of object subject to the provisions of the Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62).

Limitation of Liability of Members.

The liability of members of a company formed under the Companies Acts (*a*) may be limited either to the amount (if any) unpaid on the shares held by them, or to such amount as the members may respectively undertake by the Memorandum of Association to contribute to the assets of the Company in the event of its being wound up. This is termed limitation by

(*a*) These are the "principal Act" 25 & 26 Vict. c. 89 (1862), and the following amending Acts: 30 & 31 Vict. cc. 31 and 131; 33 & 34 Vict. c. 97; 42 & 43 Vict. c. 76; 53 & 54 Vict. cc. 62 and 63; 60 and 61 Vict. c. 19.

shares. The liability of members may also be limited by *guarantee*, subject to compliance with additional formalities.

The word "Limited" is an essential part of the name of a limited company, except where the sanction of the Board of Trade has been previously obtained, in cases where the company is not formed for profit. (30 & 31 Vict. c. 131, § 23.)

When there are Articles of Association, they are to be printed, and are to be signed by each subscriber, and attested in the same manner and with the same legal results as in the case of the Memorandum of Association; and, as a consequence, every person signing them will be as much bound by them as if he had covenanted under seal that himself, his heirs, executors, and administrators should observe them (§ 16). The subscriber's heirs and devisees will thus be bound, as well as his executors or administrators, as in the case of the Memorandum.

If any company under the Act shall carry on business when the number of members is less than seven, for a period of six months after the number has been so reduced, every person who is a member after such period, and knows that business is being carried on by less than seven members, will be liable to the whole of the debts of the company contracted during such period. (25 & 26 Vict. c. 89, § 48.)

Prospectuses.

Where a prospectus is issued, and shares allotted for a speculation, a subscriber is not liable in the first instance, unless the terms of the prospectus are fulfilled; but if it be shown that he knows the directors are carrying on with less capital, he may become liable (*a*). So by *acquiescence* he may become liable.

It is never safe to rely on the statements contained in a prospectus. It is the duty of a person who intends to apply for shares in a company on the faith of the prospectus, to examine the Memorandum and Articles of Association before he gives in his application, and see if they are in accordance with the prospectus; and if they are not, he should withhold his application.

Or if unfortunately he has actually lodged it he should, as soon as possible, repudiate his liability if he considers that there is such a variance as would entitle him to withdraw from his contract. Any delay on his part in repudiating liability may be treated as acquiescence (*b*).

In a case where a lady had been misled by what the judge

(*a*) *Pitchford* v. *Davis*, 5 M. & W., 2.
(*b*) *Cachar Co.* (*Lawrence's Case*), 36 L. J. Ch., 490.

termed the "dishonest use" of the name "Dunlop" in the name of a cycle-manufacturing company, and had applied for shares before she discovered her mistake, it appeared that, *after* finding she had been misled, she paid the sum required on allotment upon the advice of her banker—"in order," as he said, "to be in a position to recover the money already paid on her applying for shares." In the meantime she had written to the company saying that she had been misled, and demanding the return of the money she had paid with her application. It was held that although she was, in the first instance, entitled to rescind the contract, yet, in view of the payment she had made on mistaken advice, she was no longer entitled to repudiate the shares, and her application with that view was dismissed with costs (*a*).

Contracts Previous to Prospectus.

By the Companies Act, 1867, every prospectus of a company, and every notice inviting persons to subscribe for shares in a company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or traders thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company, or otherwise; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract. (30 & 31 Vict. c. 31, § 38.)

Directors' Liability Act, 1890.

This enactment, which defines the liability of Directors and others for statements made in prospectuses inviting subscriptions, is so carefully guarded in its declarations and qualifications that it is deemed best to give the operative sections *verbatim.* These sections—3 to 5—are as follows :—

3.—(i) Where after the passing of this Act a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorised such naming of him is named in the prospectus or notice as a director of the company or as having agreed to become a director of the com-

(*a*) *Per* Kekewich, J., in re *The Dunlop-Truffault Cycle and Tube Manufacturing Company, Limited,* reported in *Times,* November 11, 1896.

pany either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(*a*) With respect to every such untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe, that the statement was true; and

(*b*) With respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation. Provided always, that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of an extract from the report or valuation, such director, person named, promoter, or other person, who authorised the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

(*c*) With respect to every such untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement or copy of or extract from such document;

or unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or

notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice, and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given.

(ii) A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

(iii) Where any company existing at the passing of this Act, which has issued shares or debentures, shall be desirous of obtaining further capital by subscriptions for shares or debentures, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein, unless he shall have authorised the issue of such prospectus or notice, or have adopted or ratified the same.

(iv) In this section the word "expert" includes any person whose profession gives authority to a statement made by him.

4. Where any such prospectus or notice as aforesaid contains the name of a person as a director of the company, or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorised the issue of such prospectus or notice shall be liable to indemnify the person named as a director of the company, or as having agreed to become a director thereof as aforesaid, against all damages, costs, charges, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

5. Every person who by reason of his being a director, or named as a director, or as having agreed to become a director, or of his having authorised the issue of the prospectus or notice, has become liable to make any payment under the provisions

of this Act, shall be entitled to recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

Title to Shares, Scrip, and Letters of Allotment.

The possession or holding of letters of allotment of shares, or of scrip certificates of shares in projected railway companies, is *primâ facie* evidence of ownership, and of the power of disposition over them. But in the case of registered joint-stock companies, or companies incorporated by Act of Parliament, the title to shares is evidenced by production of a certificate of proprietorship, and by reference to the register of the shareholders of the company.

Any person entitled to a share in a registered joint-stock company in consequence of the death, bankruptcy, or insolvency of any shareholder, or in consequence of the marriage of any female shareholder, or in any way other than by transfer, may be registered as a shareholder, upon such evidence as may be required by the company. (25 & 26 Vict. c. 89.)

Share Warrants.

A share warrant issued under the provisions of the Companies Act, 1867, must bear an impressed stamp of an amount equal to three times the *ad valorem* duty chargeable on a transfer for a consideration of the nominal value of the shares (30 & 31 Vict. c. 131, § 33).

If a share warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director, or secretary, or other principal officer of the company, is liable to a penalty of £50 (33 & 34 Vict. c. 97, § 127).

Forged Transfers of Railway Stock.

Where a large amount of railway stock had been sold and transferred (previously to 1890) by one of the two executors by whom it was held, by forging the name of his co-executor on the transfers, the railway company, on the other executor applying to the Court, was directed to replace the stock, as if the sale and transfer had not taken place. The railway company, however, resolved to throw the loss upon the holders of the stock in question, who had innocently purchased it on the forged transfers, calling upon them to refund the dividends they had received as well as the principal; and this, it appeared, the company was in law entitled to do, although

some railway companies had in similar cases treated their stock certificates as indefeasible, taking upon themselves the risk of forged transfers (*a*).

Forged Transfers Acts, 1891 *and* 1892.

The attention directed to the foregoing case led to action in Parliament, and to the passing in 1891 of a new Act (54 & 55 Vict. c. 43), dealing with the case not only of railway companies, but of any company or local authority empowered to issue stock. The Act of 1892 (55 & 56 Vict. c. 36) is supplementary.

It is now provided that where a company or local authority issue or have issued shares, stock, or securities transferable by an instrument in writing or by an entry in any books or register kept by or on behalf of the company or local authority, they shall have power to make compensation by a cash payment out of their funds for any loss arising from a transfer of any such shares, stock, or securities, in pursuance of a forged transfer or of a transfer under a forged power of attorney; and such company or local authority may, if they think fit, provide, either by fees not exceeding the rate of 1s. on every £100 transferred, with a minimum charge equal to that for £25, to be paid by the transferee, or in any other manner which they may resolve upon, a fund to meet claims for such compensation.

Compensation may be paid under the Act whether the loss arose, or whether the forgery was committed, before or after the passing of the Act of 1891, and whether the person to be compensated has or has not contributed to the fund out of which compensation is paid.

Power is also given to any such company or local authority to impose reasonable restrictions on the transfer of their shares, stock, or securities, or with respect to powers of attorney for the transfer thereof, for guarding against losses arising from forgery; and where they compensate a person under the Act for any loss arising from forgery, they shall have the same rights and remedies against the person liable for the loss as the person compensated would have had.

The Act is applied to any industrial, provident, friendly benefit, building, or loan society incorporated by or in pursuance of any Act of Parliament as if the society were a company; also to any Harbour authority or Conservancy authority as if the authority were a company.

(*a*) *Barton* v. *London and North-Western Railway Company*, 24 L. R. Q. B. D., 77.

Sales and Transfer of Shares.

These must be in the statutory form, or to the like effect, and must be executed both by the transferor and by the transferee (*a*). The transferee then takes the shares subject to the conditions on which the transferor held them at the time of the execution of the transfer.

The transferor continues the holder of the share until the name of the transferee is entered in the register. If the company make default, or be guilty of unnecessary delay in registering any transfer of shares, it will be responsible in damages to the party injured (*b*).

Where a contract has been made for the sale of shares in a company, the property therein passes, in equity, to the purchaser, who becomes the "equitable" owner, and in case of default will be entitled to a decree for specific performance of the contract when the time for making the transfer arrives (*c*).

No shareholder is entitled to transfer any share after any call shall have been made in respect thereof until he shall have paid such call, nor until he shall have paid all calls for the time being due on every share held by him (*d*).

A sale of shares in a company to be completed on a future day, without any provision as to dividends, will operate to include any dividends declared after the sale but before the day of completion (*e*).

Contracts for the sale or transfer of any shares in joint-stock banking companies are to be null and void to all intents and purposes whatsoever, unless the *numbers* by which such shares are distinguished are set forth in the contract, and any person wilfully inserting any false number or entry in any such contract will be guilty of a misdemeanor. (30 & 31 Vict. c. 29, § 1.)

Liabilities of Members.

In the event of an *unlimited* company formed under the Acts being wound-up, every present and past member will be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, costs of winding-up, &c. But no past member will be liable to contribute if he has ceased to be a member for a period of one year or upwards prior to the commencement of the

(*a*) Printed copies of the statutory form, prescribed by 25 & 26 Vict. c. 89, may be obtained of law stationers.
(*b*) Addison, Contracts (8th ed.), 1016.
(*c*) *Duncuft* v. *Albrecht*, 12 Sim. 199.
(*d*) *Hall* v. *Norf. Est. Co.*, 21 L. J. Q. B., 94.
(*e*) *Black* v. *Homersham*, 4 Ex. D. 24; 48 L. J. 79.

winding-up. And no past member will be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member. Nor will he be liable to contribute unless the existing members are unable to satisfy the contributions required.

In the case of a Company *limited by shares*, no contributions can be claimed from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member.

Limited banking companies are not entitled to limited liability in respect of their notes, but are liable in respect thereof in the same manner as if registered as an unlimited Company. (42 & 43 Vict. c. 76, § 6.)

In the case of a Company *limited by guarantee*, no contribution can be claimed from any member exceeding the amount of his undertaking specified by the Memorandum of Association.

Secret Bargains between Promoters and Directors.

Directors being in a fiduciary position towards the shareholders of the company, all such bargains are sternly discountenanced by the Courts. Thus, where a director had secretly agreed with the promoter to become a director and to qualify himself, and the promoter had agreed, should the director desire to part with his qualification shares, that he would buy them at whatever price the director had paid for them and such sale actually took place after the winding-up of the company, when the shares were in fact worthless, the Court held that the director must hand over to the liquidator the money received for the shares from the promoter; and this decision was upheld by the Court of Appeal (*a*).

Many other cases to the like effect are recorded.

Paid-up Shares.

Investors in companies, and particularly intending directors, cannot be too careful in accepting or availing themselves of paid-up shares. Where forty unpaid shares, being the number necessary for a director's qualification, were allotted *without the allottee's knowledge*, and he acted as director, and subsequently acquired forty paid-up shares, it was held by the Court, on a winding-up, that the Plaintiff when he acted as a director knew what was the qualification of a director, and yet had allowed more than a reasonable time to elapse without acquiring it. He was considered to have had "notice" that the shares registered in his name were the shares he had agreed

(*a*) *Archer's Case*, 61 L. J. R. Ch. 129; L. R. (1892) 1 Ch. 322.

to take when he acted as director, and he was held liable for them as a contributory (*a*).

In another case, a purchaser of shares nominally fully paid was held to be bound by his agent's knowledge that the shares were not in fact paid up. The "agent" was a confidential clerk who had investigated the company's affairs for the purchaser on another occasion (*b*).

Winding-up by the Court.

A company under the Act (25 & 26 Vict. c. 89) may be wound up by the Court (i) whenever the company has passed a special resolution requiring winding-up by the Court; or (ii) does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year; (iii) whenever the members are reduced in numbers to less than seven; (iv) whenever a company is unable to pay its debts; (v) whenever the Court is of opinion that it is just and equitable that the Company should be wound up (*c*).

When an order has been made for winding-up a company, no Action or other proceeding can be pursued or commenced against the company, except by leave of the Court.

By the Companies Winding-up Act, 1890 (53 & 54 Vict. c. 63) some important amendments were made in the practice of winding-up companies, assimilating it in some respects to the practice in bankruptcy, and subjecting promoters, directors, and officials of companies to more stringent supervision.

The Act provides that on an order being made for winding-up a company, one of the official receivers attached to the Court for bankruptcy purposes is to be the provisional liquidator of the company, and shall continue to act as such until he or another person is appointed liquidator; and when a person other than the official receiver shall be appointed liquidator, he is to give the official receiver such information and aid as may be requisite for enabling that officer to perform his duties under the Act (§ 4).

There shall be made out and submitted to the official receiver a statement as to the affairs of the company in a pre-

(*a*) In re *Portuguese Consolidated Copper Mines, Limited, Ex parte Lord Inchiquin*, C. A. (1891), W. N. 118.

(*b*) In re *Halifax Sugar Refining Company*, C. A. (1891), W. N. 29.

(*c*) It has been held (per Vaughan Williams, J., *in re Sailing Ship Keatmere Co.*, W.N. 1897, p. 58) that a complete deadlock in the management of the company's affairs is to be considered a ground for making a winding-up order.

scribed form, verified by affidavit, and showing the particulars of the assets, debts, and liabilities of the company ; the names, residences, and occupations of the creditors of the company ; the securities held by them, and the dates when the securities were given ; and such further or other information as the official receiver may require : the statement to be submitted and verified by one or more of the directors, and by the secretary or other chief officer of the company. The statement must be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the Court may for special reasons appoint (§ 7).

The official receiver, as soon as practicable after receipt of this statement, is to submit a preliminary report to the Court —(i) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities ; and (ii) if the company has failed, as to the causes of the failure ; and (iii) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof. He may also, if he thinks fit, make a further report, stating the manner in which the company was formed, and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer in relation to the company since the formation thereof, and as to any other matters which in his opinion it is desirable to bring to the notice of the Court ; and on such report, the Court may direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer, shall attend on a day appointed for the purpose, and be publicly examined as to the promotion or formation of the company, or as to the conduct of its business, or as to his conduct and dealings as director or officer of the company (§ 8).

But this last-mentioned section (it has been decided) does not authorise a public examination unless the official receiver has made a "further report" to the effect that, in his opinion, a fraud has been committed by a person in the promotion or formation of the company, or by a director or other officer in relation to the company since its formation ; and further, the power to direct a public examination of the persons mentioned in the section does not apply to any one of them against whom a *primâ facie* case of fraud has not been disclosed by such report (*a*).

(*a*) Ex parte *Barnes*, re *The English and Scottish Mercantile Investment Trust*, H. L., E. (1895) A. C., 146.

Where it appears that any person who has taken part in the formation or promotion of any company, or any past or present director, manager, liquidator, or other officer, has misapplied or retained, or become liable or accountable for, any moneys or property of the company, or been guilty of any misfeasance or breach of trust, the Court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory of the company, examine into the conduct of such promoter, director, manager, liquidator, or officer, and compel him to repay with interest any moneys, or restore any property, so misapplied or retained, or for which he has become liable or accountable, or to contribute such sums of money to the assets of the company by way of compensation as the Court thinks just. The provisions of this section are to apply notwithstanding that the offence is one for which the offender may be criminally responsible (§ 10).

Distribution of Assets.

By the Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), upon the winding-up of a company there shall be paid in priority to all other debts—

(i) All local rates due at the commencement of the winding-up, and payable within 12 months next before such date, and all assessed taxes, land tax, property or income tax assessed up to the 5th April next before the said date, and not exceeding in the whole one year's assessment.

(ii) All wages or salary of any clerk or servant during the 4 months previous to the commencement of the winding up, not exceeding £50 (*a*).

(iii) All wages of any labourer or workman not exceeding £25, in respect of services rendered during the 2 months previous to the commencement of the winding up.

These debts are to rank equally and be paid in full unless the assets of the Company are insufficient, in which case they shall abate in equal proportions.

It is further provided by an Act of 1897 (60 & 61 Vict. c. 19) that on the winding-up of any company, or on the appointment of a receiver or possession being taken on behalf of the holders of debentures secured by a floating charge, the debts mentioned above shall, so far as the assets available for payment of general creditors may be insufficient to meet them, have priority over the claims of holders of debentures, and

(*a*) A managing director's claim for salary is not a claim *quâ* member of the company (if he be one), and he therefore ranks with other creditors, without preference (*Dale* v. *Plant*, 62 L. T. R., 215).

shall be paid accordingly out of any property comprised in or subject to such charge.

This provision applies to Ireland as well as England, but not to Scotland.

"*One Man*" *Companies.*

It has been decided by the House of Lords that, provided a company be validly constituted under the Companies Acts, without fraud on the part of the promoters, a "one man" company—that is, a company in which the control of its affairs, and a charge, in the form of debentures, over the whole of its assets, are practically vested in a single shareholder—is not illegal under those Acts. So that if credit is given to such a company, and it become insolvent, an unsecured creditor may find himself practically helpless (*a*).

Rights and Liabilities of Creditors and Shareholders.

A person who has agreed to become a member of a company, and whose name is on the register, is a "contributory;" and it matters not as to his liability as a contributory, that his consent was obtained by fraud. (25 & 26 Vict. c. 89.) So, a contract made with the company by a shareholder who has been deceived by a fraudulent prospectus can only be avoided subject to the rights of creditors (*b*).

Where a company had borrowed from its printer sums amounting to £1,600, and deposited with him 16,000 shares which he understood to be fully paid up, and the company afterwards went into liquidation, the liquidator sought to make the printer liable for £16,000, the amount of unpaid calls on the shares; and it was held, both by the judge of first instance

(*a*) *Salamon* v. *A. Salamon and Co. Limited* (reversing judgments of Vaughan Williams, J., and the Court of Appeal), L. R. (1895) 2 Ch., 323; H. L. E. (1897), A. C. 59.

The propositions affirmed by the House of Lords, in giving judgment in this case, were as follows:—"Where a trader, who is solvent, converts his business into a limited liability company, and all the statutory requirements for the constitution of the company are fulfilled, the Court is not entitled to speculate on the motives which induced the trader to turn his business into a company, or to impose conditions as necessary to the validity of the company which are not found in the statutes. And the mere fact that the trader is virtually sole owner of the concern, the other shareholders having only a nominal interest, and that he has received debentures secured on the business as part of the purchase-money, does not authorise the Court to rescind the agreement for the sale and purchase of the business, or to deprive the founder of his security so as to assist the unsecured creditors by postponing his claim on the assets" (see *Law Journal*, 21st November 1896).

(*b*) *Oakes* v. *Turquand*, 36 L. J. Ch., 949.

and by the Court of Appeal, that the printer was liable. But on appeal, these decisions were reversed by the House of Lords, with costs, on the ground that upon the true view of the facts the appellant was induced to lend his money by the representation that the shares handed to him as security were fully paid; and that the company and the liquidator were therefore estopped from alleging that the shares were not fully paid (*a*).

A limited company may, by special resolution, provide that any portion of its capital which has not been called up shall not be capable of being called up, except in the event of the company being wound up. (42 & 43 Vict. c. 76, § 5.)

A company has no power to reduce the value of a portion of its shares without reducing the whole. Thus the sanction of the Court was refused to a resolution reducing ordinary shares without reducing the preference shares (*b*).

Frauds by Directors or Officials of Companies.

If any director, manager, or other officer of a company be guilty of any breach of trust, or of altering or falsifying any book, paper, &c., with intent to defraud or deceive, he will be deemed guilty of a misdemeanor, and liable to 2 years' imprisonment with hard labour. (24 & 25 Vict. c. 96, §§ 81—84.)

And the Court has power to assess damages against a director or officer of a company who has been guilty of any breach of trust, notwithstanding that the offender is also responsible criminally. (25 & 26 Vict. c. 89, § 165.)

Directors and other Officers not to make Private Profits.

A person holding a fiduciary position with regard to a Company—for instance, as a solicitor or a director—cannot be allowed, in equity, to obtain for himself, or his partner in business, a benefit or profit derived from the employment of the funds of the company, in any matter in which he, as such solicitor or director, is engaged; and any profits so made will be decreed to be for the use and benefit of the company (*c*).

It is a breach of trust for a director to receive his qualification as a gift from the vendor or promoter (*d*).

Contracts by and with Companies.

The general rule of law as to contracts with companies or other corporations is, that no contract is the contract of a

(*a*) *Bloomenthal* v. *Ford*, H. L., E. (1897), W. N. 16 (1).
(*b*) In re *Union Plate Glass Company*, *per* Kay, J., W. N. (1889), 170.
(*c*) *Bank of London* v. *Tyrell*, 31 L. J. Ch., 369; *Hickens* v. *Congreve*, 6 L. J. Ch., 167; *Aberdeen Rail. Co.* v. *Blackie*, 1 Macq. H. L., 461.
(*d*) In re *Wheal Buller Consols Company*, 38 L. R. Ch. D. 42.

corporation unless the common seal is affixed, and that without this formality the contract will only bind the individuals who are parties to it.

But as regards the contracts of a trading company made in the way of its business, this rule (as might be expected) has long been superseded. Such companies may make valid contracts in the way of their trade through their authorised agents, and may sue or be sued upon such contracts or for any injuries arising out of them (*a*). Of this kind would be contracts for the hiring of labour, the engagement of clerks and similar subordinate agents, the purchase, sale, manufacture, hiring, and carriage of goods, the signing of bills and notes, and the like.

A company, being a corporation, can, of course, make all its contracts under seal if it pleases, but every such contract will then be chargeable with 10s. stamp duty as a deed, even if not otherwise chargeable.

By the Act of 1867 it has been expressly provided that (i) a contract which, if made between private persons, would have to be under seal, may be made by the company under its seal, and may be in the same manner varied or discharged; (ii) a contract which, if made between private persons, would be required to be by writing and signed by the parties, may be signed on behalf of the company by any person acting under its expressed or implied authority, and may in the same manner be varied or discharged; and (iii) a contract which, if made between private persons, could be made by word of mouth, may be so made on behalf of the company by any person acting under its expressed or implied authority, and may in the same way be varied or discharged. (30 & 31 Vict. c. 131, § 37.)

And as regards bills and notes, a promissory note or bill of exchange shall be deemed to have been made, accepted, or indorsed on behalf of any company under the Act [of 1862], if made, accepted, or indorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or indorsed by or on behalf or on account of the company by any person acting under the authority of the company. (25 & 26 Vict. c. 89, § 47.)

By the Bill of Exchange Act, 1892, a bill or note or other instrument requiring signature by a corporation will be sufficiently signed if sealed with the corporate seal. (45 & 46 Vict. c. 61, § 91.)

(*a*) *South of Ireland Colliery Company* v. *Waddle*, 38 L. J. C. P., 338.

A resolution directing business to be done, or a minute of agreement entered on the books of a corporation, will *not* bind them (*a*).

Any agreement *under seal* of a Company which is not otherwise charged is chargeable as a deed with 10*s.* stamp duty.

Liabilities of Members as to Negotiable Instruments.

In the absence of proof to the contrary, one member of a joint-stock company cannot bind the remainder by negotiable instruments. Thus, in a case in which a bill was drawn by one of the directors of a gas company, on himself and the other directors, which was accepted by the chairman for himself and the others, the acceptance was held not to bind the others (*b*).

It is incumbent on a Plaintiff to prove that the directors had authority to bind the other members, by drawing and accepting bills of exchange (*c*).

Accounts and Audit.

Once at least in every year the accounts of every banking company registered after the 15th August, 1879, are to be examined by an auditor elected annually at the general meeting; and the balance-sheet is to be signed by the auditor, secretary or manager, and at least three directors (42 & 43 Vict. c. 76, §§ 7, 8).

The Regulations of Table A (see *ante*, p. 149) provide, as to accounts, that the books of account shall be kept at the registered office of the company, and shall be open to the inspection of the members during the hours of business.

Further, once at least in every year the directors are to lay before the company, in general meeting, a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting, together with a balance-sheet containing a summary of the property and liabilities of the company, a printed copy whereof is to be sent seven days previously to the meeting to every member.

Once at least in every year, also, the accounts are to be examined, and the correctness of the balance-sheet ascertained, by one or more auditor or auditors, to be appointed at the first by the directors, and subsequently by the company in general meeting.

(*a*) *Mayor of Ludlow* v. *Charlton*, 6 M. & W., 815; *Arnold* v. *Mayor of Poole*, 6 M. & G., 860.
(*b*) *Bramah* v. *Roberts*, 3 Bing., N. C., 963.
(*c*) *Dickenson* v. *Valpy*, 10 B. & C., 142.

SECTION III.—PARTNERS AND PARTNERSHIPS.

Nature of Partnership.

He who takes the general profits of a partnership must of necessity be made liable for the losses (*a*).

He who lends his name as a partner, becomes, as against all the rest of the world, a partner (*a*).

A *nominal* partner is one having no real interest in the concern, but who allows his name to be used and held out to the public; and if, on the faith of that name, a man deals with the firm, the nominal partner will be liable on the contract (*b*).

A *dormant* or *sleeping* partner is one whose name does not appear to the world as one of the firm. A dormant partner is responsible for the engagements of the firm; even to those who, when they contracted with the firm, were ignorant of his existence (*c*).

Each member of a partnership, whether active or dormant, is considered in law as the agent of the others, and may bind them by his contracts, notes, bills, &c., unless there has been some express stipulation to the contrary.

Partnership Act, 1890.

By the Act to declare and amend the law of partnership (53 & 54 Vict. c. 39), partnership was defined to be "the relation which subsists between persons carrying on a business in common with a view of profit" (§ 1); and it was enacted that in determining whether a partnership does or does not exist, regard shall be had to the following rules:—

(1) Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owner do or do not share any profits made by the use thereof.

(2) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

(3) The receipt by a person of a share of the profits of a business is *primâ facie* evidence that he is a partner in the

(*a*) *Waugh* v. *Carver*, 2 H. Black., 235; but see *Wheatcroft* v. *Hickman*, 30 L. J. C. P., 125.

(*b*) *Guidon* v. *Robson*, 2 Camp., 302; *Waugh* v. *Carver*, 2 H. Black., 235.

(*c*) *Ex parte Gellar*, Rose, 297; *Kilshaw* v. *Jukes*, 3 B. & S., 847.

business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular—

(*a*) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner:

(*b*) A contract for the remuneration of a servant or agent by a share of the profits of the business does not of itself make the servant or agent a partner:

(*c*) The widow or child of a deceased partner, receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner:

(*d*) The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such, provided that the contract is in writing, and signed by or on behalf of all parties thereto:

(*e*) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner. (§ 2.)

In the event of any person to whom money has been advanced by way of loan as above mentioned, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied. (§ 3.)

Private Debts of a Partner.

By the same Act (§ 23) a new means of enforcing a judgment for the private debt of a partner against the partnership property was given. Instead of proceeding, as heretofore, by writ of *Fieri facias* (which involved a sale of the partner's share by the sheriff, or a dissolution of the partnership), a judgment

creditor will now be able to obtain an order charging the partner's share with the amount of the debt with interest. By the same or a subsequent order a receiver may also be appointed, who will take the partner's share of profits and any other money which may become due to him in respect of the partnership. By § 33, if a partner suffer his share of the partnership property to be charged under the Act, the other partners have the option of dissolving the partnership.

Liabilities of Outgoing and Incoming Partners.

The Act also provided (§ 17) that—

(1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

(2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3) A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

Liabilities of Partners.

An unknown *principal* may be sued, on being discovered to be such: so may an *undisclosed partner*—and as to this there is no distinction between express or written, implied or verbal contracts (*a*).

Mercantile partners bind each other by accepting bills, &c.; not so attorneys and others, unless by special authority (*b*).

Each partner in a trade, business, or scheme is liable for the contracts of the other; not only to the extent of capital he has embarked in the concern, but to the full extent of his means; unless it is in a company with limited liability.

Where one partner signs for the firm, being authorised to do so, and describes himself as signing for the firm, he is not separably liable, but the firm alone. If he accepts, professing to have authority which he has not, a bill addressed to the firm, he makes himself liable (*b*).

The test as to the liability of a partner, who is not an actual

(*a*) *Waugh* v. *Carver*, 2 H. Black., 235.
(*b*) Smith, Contracts (8th ed.), 463.

party to a contract, is whether the partner or partners who contracted did so in the capacity of agents for him (*a*).

One partner cannot sue another at law upon any matter involving the partnership accounts (*b*). The remedy in such case is in equity. But partners may sue each other at law in respect of matters independent of the partnership, or on express covenants and agreements (*c*).

And one partner may sue another for his share of the produce of the partnership transaction, after a final account stated and a balance acknowledged to be due (*d*).

Retirement of a Partner.

A *general* notice of retirement of a partner is sufficient, as regards the world at large, but an *express* notice is requisite to previous customers.

Upon the dissolution of partnership, each partner should take care to announce the dissolution in the *London*, *Edinburgh*, or *Dublin Gazette*, according to the location of the principal place of business. He should also remove his name from the premises, send circulars to customers, and do all in his power to make known the dissolution; for any neglect of the kind may leave him still liable, in the event of one or more of the members of the firm carrying on the trade.

Death or Bankruptcy of Partner.

The death or bankruptcy of a partner immediately dissolves the partnership; and that, not only as regards the deceased, but also, unless there is some agreement to the contrary, as regards all the other partners. (53 & 54 Vict. c. 39, § 33.)

Joint Leases, Partnership Property, &c.

If two persons take a lease of a farm jointly, and one of them die, the lease will belong to the survivor; but the stock on the farm, though occupied jointly, will be shared between the survivor and the personal representatives of the deceased (*e*).

If one of several persons jointly interested in a lease steal a march upon the others, and renew the lease in his own name, he will be compelled to hold it in trust for the others according to their respective shares (*f*).

(*a*) *Cox* v. *Hickman*, 30 L. J. C. P., 125.
(*b*) *Green* v. *Beesley*, 2 Bing., N. C., 108; *Carr* v. *Smith*, 5 Q. B., 128; *Wilson* v. *Curzon*, 15 M. & W., 532.
(*c*) *Brown* v. *Tapscott*, 6 M. & W., 119; *Blech* v. *Balleras*, 29 L. J. Q. B., 261.
(*d*) *Bovill* v. *Hammond*, 6 B. & C., 149; *Henley* v. *Soper*, 8 B. & C., 20; *Wray* v. *Milestone*, 5 M. & W., 21.
(*e*) *Lake* v. *Craddock*, 1 Tud. Eq. Ca., 166.
(*f*) *Featherstonhaugh* v. *Fenwick*, 17 Ves., 311.

SECTION IV.—PRINCIPAL AND AGENT.

When a Principal is bound by the Contract of his Agent.

It is necessary first to point out the distinction between "general" and "particular" agents. If one person entrusts another with the sale of a particular horse, or other article, he is a "particular" agent. If he is appointed to sell everything, and the horses or other articles are consigned to him from time to time for the purpose, he is a "general" agent.

If a particular agent exceed his authority, his principal is not bound; but if a general agent exceed his authority, his principal *is* bound; provided the excess be within the ordinary scope of his agency (*a*).

An Action will not lie against an agent for merely omitting to perform a commission, unless he is bound by some contract or duty to undertake it; but if he does undertake it, *though gratuitously*, he is liable for misfeasance in the performance (*b*). The great maxim of agency, *Qui facit per alium facit per se* ("He who does an act through the medium of another, is in law considered as doing it himself") has a retrospective effect: so that a tradesman, by suing for the money for goods sold some time previously by an agent, ratifies the sale by the agent: and it cannot then be stated as an objection to the claim, that the tradesman was unknown to the agent at the time of the sale (*c*). But where a person, at the time of doing an act, does not profess to be therein acting as an agent, there is nothing to ratify; and another person, however interested, *cannot* adopt the transaction (*d*).

An illiterate person, who was blind of one eye, signed at the request of an agent of an accident insurance company an application for a policy on a form which stated he had "no physical infirmity." By the policy the company were to pay £250 for (*inter alia*) the loss of one eye, and £500 for total blindness. The insured, having lost his remaining eye by an accident, sued upon the policy; and it was held that the knowledge of the agent that the insured was blind of one eye bound the company, and that the insured could recover as for total blindness (*e*).

Where an agent acts in his own name for an undisclosed principal, either agent or principal may sue (*f*).

(*a*) *Thomson* v. *Davenport*, 2 Smith, L. C. (8th ed.), 377.
(*b*) *Elsee* v. *Gatward*, 5 T. R., 143; *Hart* v. *Miles*, 27 L. J. C. P., 218.
(*c*) *Foster* v. *Bates*, 12 M. & W., 226.
(*d*) *Wilson* v. *Tummon*, 6 Scott, N. R., 904.
(*e*) *Bawden* v. *London, Edinburgh, and Glasgow Insurance Company*, C. A. (1892) W. N., 87.
(*f*) *Sims* v. *Bond*, 5 B. & Adol., 393.

Where a British merchant buys for a foreigner, the universal understanding is, that the credit is given to the British buyer, and not to the foreigner. And so, where a principal resident abroad instructs a commission agent in England to order goods for him, the person contracting with the agent to supply or manufacture the goods cannot sue the foreign principal for breach of the contract (*a*).

Brokers, Commission Agents, Commercial Travellers, &c.

If a commission agent be employed to sell goods for a tradesman (called in law the "principal"), the tradesman paying him a certain sum per quarter, it does not necessarily follow that such a commission constitutes a contract of hiring and service (*b*). If no term of service has been expressly agreed upon, the principal may, at any time, revoke the agent's authority as to things to be done and remaining unexecuted (*b*).

Where a commercial traveller was engaged by a Company for three years at a commission on goods ordered, and before the expiration of the three years the Company was wound up, it was held that he was entitled to compensation in respect of commission for the unexpired portion of the term (*c*).

Business actually done by an agent in the execution of his commission will, of course, be binding on his principal: but an agent cannot, after his authority has been revoked, enter, as between himself and his principal, into any fresh transaction (*d*).

If goods are intrusted to a commission agent for sale, the principal may, at any time before a sale has been made, require the goods to be returned to him; and the agent has no right to sell contrary to the express instructions of his employer, for the purpose of repaying himself his advances (*e*).

If an agent agrees to act for a firm in partnership for a term of years, the contract is dissolved by the death of one of the partners during the term (*f*).

Every broker and commission agent who is employed to make purchases, or to sell on behalf of his principal, impliedly promises to execute the commission with care, skill, diligence, and discretion, and to obey the orders and directions of his principal (*g*). If, on being ordered to buy goods of first-rate

(*a*) *Die Elbinger Actien Gesellschaft* v. *Claye*, 42 L. J. Q. B., 151.
(*b*) *Butterfield* v. *Marler*, 3 C. & K., 163.
(*c*) In re *Patent Floor Cloth Co.*, 41 L. J. Ch., 476.
(*d*) *Fletcher* v. *Marshall*, 15 M. & W., 763.
(*e*) *Smart* v. *Sandars*, 3 C. B., 380; *Chinnock* v. *Sainsbury*, 30 L. J. Ch. 409.
(*f*) *Tasker* v. *Shepherd*, 30 L. J. Ex., 207.
(*g*) *Mainwaring* v. *Brandon*, 2 Moore, 125.

quality, he buy inferior ones, he will be liable in damages to his principal, as for a breach of contract (*a*).

He is bound to deliver just and true accounts to his principal when requested to do so; and he must not mix his own property with that of his employer or others (*b*).

Unauthorised Borrowing by Agent.

Where a principal entrusts an agent with securities, instructing him to raise a certain sum upon them, and the agent borrows a larger sum upon the securities and fraudulently appropriates the difference, the principal cannot redeem the securities without paying the lender all he has lent (the lender having acted in good faith and in ignorance of the limitation), although the agent obtained the loan by forgery and fraud upon his principal, and although the lender did not know that the agent had authority to borrow at all and made no inquiry (*c*).

Secret Profits made by Agents.

It is an inflexible rule of equity that no agent can be allowed to make any profit, in connection with his agency, without the knowledge and consent of his principal; and accordingly, an agent will not be allowed to make secret profits, such as discounts with tradesmen on business done with them. And in a case where several tradesmen (according to the practice of the trade) allowed an agent a discount off the invoiced prices, which prices had been charged to the principal at increased rates with reference to such allowance, the agent was compelled by the Court to account to his principal, and refund all the discounts allowed him (*d*).

Payment of Brokerage or Commission.

If the principal, in his letter of instruction to an agent, state the amount of commission proposed to him for acceptance, and the agent in reply object to it as insufficient, but nevertheless act upon the letter of instruction, he will be bound by the terms stated in the letter (*e*).

A commission agent employed to obtain orders, for which he is to receive a commission on all goods bought by persons

(*a*) *Mainwaring* v. *Brandon*, 2 Moore, 125.

(*b*) *Thom* v. *Bigland*, 8 Ex., 725; *Gray* v. *Haigh*, 20 Beav., 228.

(*c*) *Brocklesby* v. *Temperance Permanent Building Society*, C.A. (1893), 3 Ch. 130; H. L., E. (1895) A. C. 173.

(*d*) *Turnbull* v. *Garden*, 38 L. J. Ch., 331. And see the case of *Oetzmann* v. *Long*, reported in *Times*, 6th and 7th July, 1896.

(*e*) *Moore* v. *Maxwell*, 3 C. & K., 554.

through his efforts and agency, is entitled to his commission as soon as the bargain is made and accepted by the principal (unless there is a special agreement to the contrary): and this too whether the goods are or are not in existence at the time, and whether the contract is or is not ultimately carried out; and whether it turns out to be a good or a bad bargain (*a*).

Commission to House and Estate Agents.

Where the selling or letting of a house or estate is placed in the hands of several agents, the successful one alone is entitled to commission on the purchase money or rent: unless instructions have been given to the others to advertise the property, or to render some special service in the manner entitling them, by the custom of the trade, to some remuneration *quantum valeat* for their services (*b*).

Where a commission agent is employed to negotiate the sale of a house or estate upon the terms that he is to be paid a commission at so much per cent. on the purchase money "received by the employer," or on the happening of a *certain event;* he will not, in *such case*, be entitled to his commission unless the purchase money has actually been "received," or the event happened; or unless there has been fraudulent delay or wilful neglect on the part of the employer (*c*).

If an agent be employed, upon a commission at so much per cent., to sell an estate at a certain price, and he finds a purchaser at the price named, but the principal then declines to sell, and revokes the agent's authority; such agent will, in general, be entitled to his commission notwithstanding (*d*).

Duties and Responsibilities of House and Estate Agents.

Every such agent employed to procure a tenant for a house, impliedly undertakes to use due care and caution in letting such house, and to make all proper and necessary inquiries touching the respectability and solvency of the party he introduces as a tenant. If he lets the house to a notoriously insolvent person, or to a person whom he knows to be insolvent, he will be responsible in damages to his employer (*e*).

(*a*) *Lockwood* v. *Levick*, 29 L. J. C. P., 340.
(*b*) *Prickett* v. *Badger*, 26 L. J. C. P., 33.
(*c*) *Bull* v. *Price*, 7 Bing., 237; *Alder* v. *Boyle*, 4 C. B., 635.
(*d*) *Simpson* v. *Lamb*, 17 C. B., 616.
(*e*) *Heys* v. *Tindall*, 30 L. J. Q. B., 362.

A house agent, to whom instructions are given to procure a purchaser for property, has not, though the price is named in the instructions, authority to enter into a binding contract for the sale of such property; and therefore specific performance of a contract so entered into will not be decreed (*a*).

Caution necessary in giving Authority to Agents.

Owners of house property, especially of furnished houses, should be very careful, when signing forms of authority to house-agents, to negotiate the letting of their houses, that they do not give the agent the entire control of their property. It often happens, especially to ladies, that they find themselves let in for improvident bargains in consequence of having incautiously signed away their rights to control the disposition of their property; and they may even become liable for trumped-up expenses, though no tenant has been found by the agent.

The terms on which any commission is to be paid to an agent, and the rate of his commission, should also be carefully scrutinised, and clearly understood, before any form of authority is signed by a house owner or occupier.

Joint Liability, Joint Debtors, &c.

A covenant, bond, or contract, or obligation under seal, made with two or more jointly, to pay money or do any other act for their benefit, shall be deemed to include and imply an obligation to do the act to or for the benefit of the survivor or survivors of them. (44 & 45 Vict. c. 41, § 60.)

After the decease of any one *joint debtor*, the survivors or survivor may be sued for the whole debt, as though the deceased had no share in it, and the estate of the deceased will be discharged from all liability at law and in equity.

So, if a judgment be obtained against two or more *jointly*, and one of them die, the estate of the survivor will be exclusively liable to be taken in execution (*b*).

(*a*) *Hamer* v. *Sharp*, 44 L. J. Ch., 53.
(*b*) Williams, Personal Prop. (13th ed.), 400.

SECTION V.—CONTRACTS AND AGREEMENTS.

What Constitutes a Contract.

A contract is an agreement by which two or more parties mutually promise and engage, or one of them only promises and engages to the other or others, to do or give some particular thing, or to abstain from doing some particular act.

Where a contract is put into writing, and is signed, sealed, and delivered by the parties, it is termed a "deed."

A "simple contract" is one made either by word of mouth, or to be inferred from the conduct or acts of individuals: or an engagement which is put into writing and signed, but not sealed and delivered like a deed.

A *written agreement cannot be varied by parole;* that is to say, verbal evidence cannot be given to contradict or vary the terms of a written agreement.

Custom or Usage, as applied to Contracts.

Where there is a general usage, or custom, of any particular trade or place, the law will imply on the part of one who contracts, a promise for the benefit of the other contracting party in conformity with such usage or custom; provided there be no express stipulation between them inconsistent therewith (*a*).

Thus, in the case here referred to, it was proved that by the usage of trade on the river Thames credit is given by a shipwright for repairs of a ship, if no agreement be made as to the time of payment; and it was held that the parties must be supposed to have dealt on the terms of the usage, and therefore that the shipwright had no lien on the ship for the repairs.

Illegal Contracts.

There are three important grounds upon which contracts may be set aside as illegal: (1) Where they are in violation of morality; (2) Where opposed to public policy; (3) Where tainted with fraud. For instance, a printer cannot maintain an action against his master for work and labour bestowed upon an immoral or libellous work (*b*). The rent of lodgings let to an immodest woman to enable her to carry on her abominations cannot be recovered (*c*).

Contracts opposed to public policy are those in restraint of

(*a*) *Raitt* v. *Mitchell*, 4 Camp., 146.
(*b*) *Clay* v. *Yates*, 1 H. & N., 73; 25 L. J. Ex., 237.
(*c*) *Girardy* v. *Richardson*, 1 Esp., 13.

trade: such are illegal (*a*) in the abstract, but Parliament has from time to time sanctioned certain things which in a strict sense of interpretation may be said to be in restraint of trade.

Any fraud, suppression of truth, false suggestions, or concealment of defects, are grounds for rescinding an agreement, or not carrying it into execution. In cases of fraud, the party defrauded must apply immediately. If he elect to abide by an agreement, he cannot afterwards question its validity.

Frauds by Persons in Confidential Relations.

Where a person, standing in a confidential relation or influential position towards another, makes use of such position to obtain an advantage to himself at the expense of the other, he will not be permitted to retain any advantages he may have gained thereby (*b*).

For instance, contracts and conveyances by children or young persons recently attaining majority, whereby benefits are secured to parents or to persons who stand *in loco parentum*, or to persons having influence over them, unless fair and reasonable, and entered into with perfect good faith and as free agents having independent advice, will be set aside unless third persons have *bonâ fide* acquired rights under them (*c*).

And where a man of large fortune, who suffered from ill-health, had placed himself under the care of a family who, with himself, professed peculiar religious views, and they in course of several years obtained from him gifts amounting to about £100,000, these were set aside by the Court, and the moneys ordered to be repaid to his executors, as having been obtained by undue influence under the guise of religion (*d*).

So, likewise, bonds and other agreements, purporting to secure payment or reward for using influence over another to induce him to make a will, have been declared illegal (*e*).

Bond or other Contract in Restraint of Trade.

A bond or promise to restrain oneself from trading in a particular place, if made upon a reasonable consideration, is good. But not if it be made on no reasonable consideration, or to restrain a man from trading at all (*f*). (See also *post*, pp. 188, 189, under "Sale of Goodwill").

(*a*) *Collins* v. *Blantern*, 1 Smith, L. C. (9th ed.), 398.
(*b*) *Huguenin* v. *Baseley*, 2 Wh. & Tud., L. C. in Eq. (6th ed.), 597.
(*c*) *Hogleton* v. *Hogleton*, 15 Beav., 278; *Espey* v. *Lake*, 10 Hare, 260; *Savery* v. *King*, 5 H. L., 627; *Berdoe* v. *Dawson*, 34 Beav., 603.
(*d*) *Morley* v. *Loughnan*, L. R. (1893), 1 Ch. 736.
(*e*) *Collins* v. *Blantern*, 1 Smith, L.C. (9th ed.), 398.
(*f*) *Mitchell* v. *Reynolds*, 1 P. Wms., 181.

In contracts of personal service containing a negative as well as a positive stipulation—that is, a stipulation not to work for another as well as an agreement to do the employer's work—the Court (it has been decided) will in some cases restrain the servant from doing work for another employer, although it will not specifically enforce the positive stipulation (*a*). In a case of a similar kind, it was laid down that the Court would not grant an injunction unless the negative stipulation was confined to the particular class of work which the servant had agreed to do (*b*).

Champerty.

This is the purchase of a suit, or the right of suing: in fact, a bargain between a Plaintiff or Defendant in a cause and another person, whereby they agree to divide the land or other matter sued for, between them, if they prevail at law: whereupon the "champertor" is to carry on the party's suit at his own expense. Agreements or assignments made between a creditor and a third person to maintain a suit of the former against his debtor, whereby they might share the profits resulting from the success of the suit, have always been repudiated by the Courts. And contracts which tend to encourage champerty may be declared void (*c*).

In a recent case the whole subject was fully discussed from a particular standpoint (*d*).

Contracts by and with Lunatics.

Fair contracts with a lunatic are valid (*e*).

A lunatic is liable upon an executed contract for articles suitable to his degree, furnished by a person who did not know of his lunacy, and did not impose upon him (*f*).

Where a defendant in an action of contract sets up the defence that he was insane when the contract was made, to succeed in his defence he must show that at the time of entering into the contract his insanity was known to the plaintiff (*g*).

Contracts by Alien Friends and Enemies.

Alien *friends* may contract and sue, whether the contract be

(*a*) *Lumley* v. *Wagner*, 21 L. J. R. Ch., 898.
(*b*) *Ehrmann & Sons* v. *Frank Bartholomew*, 21 L. J. R. Ch., 221; see also *Whitwood Chemical Company* v. *Hardman*, 60 L. J. R. Ch., 428.
(*c*) *Reynall* v. *Sprye*, 1 D. M. & G., 660.
(*d*) *Bradlaugh* v. *Newdegate*, 52 L. J. Q. B. D., 454.
(*e*) *Baxter* v. *Earl of Portsmouth*, 5 B. & C., 170.
(*f*) *Nelson* v. *Duncombe*, 9 Beav., 211; *Owen* v. *Davies*, 1 Ves. Senr.,
(*g*) *Imperial Loan Company* v. *Stone*, C. A. (1892) 1 Q. B., 599.

made in England or abroad, with this distinction: if made in England, it is expounded according to the law of England; if abroad, according to the law of the country where made (*a*).

Thus according to the English law, if a bill of exchange be payable to A or order, then A's indorsement—that is, his writing of his name on the back—is sufficient to transfer the property in it to any one to whom he may choose to hand it (*a*). In France, a special indorsement—that is, an indorsement naming the transferee—is necessary for the same purpose (*b*).

If an Action be brought in this country by the indorsee of an English bill, he will recover on showing the simple indorsement. If brought by the indorsee of a French bill, he must show a special indorsement (*b*).

Although contracts are interpreted by the law of the country where made, the remedy must be pursued as it exists in the country where the suit is brought (*c*).

All contracts made by alien *enemies* are void. If made during war, they cannot be enforced on return of peace (*c*).

Contracts relating to Foreign or Colonial Property.

A suit in equity cannot be brought for a partition of land situate in a country out of the jurisdiction, for the Court cannot award a commission there. But it may for an account of the rents or profits of such land; or for specific performance of an agreement respecting such land.

As a general rule, a contract void by the law of the country in which it was made cannot be enforced in an English Court (*d*).

A contract valid by the law of the country where it is made is valid everywhere, unless it be a contract for the doing of a thing that is illegal in the country where it is sought to be enforced. If a contract entered into in one country is required to be enforced in another, such contract must be a valid one according to the laws of both countries (*d*).

Contracts relating to Property and Movables Abroad.

Contracts made in one country concerning land or other immovable property situate in another country must be inter-

(*a*) *Mostyn* v. *Fabrigas*, 1 Smith, L. C. (9th ed.), 628.
(*b*) *Trimby* v. *Vignier*, 1 Bing., N. C., 151.
(*c*) *Mostyn* v. *Fabrigas*, 1 Smith, L. C. (9th ed.), 628.
(*d*) *Hope* v. *Hope*, 26 L. J. Ch., 417.

preted according to the law of the country in which the property is situate—the *lex loci*, as it is called (*a*). But contracts relating to personal or movable property must be interpreted either according to the law of the country in which the contract is made, or according to that in which the contract is to be performed. If the contract is valid by the law of the country where made, it is valid everywhere, unless it be *contra bonos mores*, or a contract for doing that which is prohibited in the country where it is sought to be enforced (*b*).

Stamp Duties.

The duties chargeable on instruments required to be stamped are regulated by the Stamp Act, 1891 (54 & 55 Vict. c. 39).

The Act provides (§ 22) that where the duty of sixpence is payable upon an agreement the duty may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the agreement is first executed.

The person who cancels a stamp should do so (§ 8) by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, or otherwise so effectively cancel the stamp as to render the same incapable of being used again.

Agreements subject to Duty.

Any Agreement or Memorandum of Agreement, made in England or Ireland under hand only, or in Scotland without any clause of registration, and not otherwise specifically charged with any duty, whether the same be only evidence of a contract, or obligatory upon the parties from its being a written instrument, is chargeable with 6*d.* stamp duty.

The following are exempt: (i) Agreement or memorandum the matter whereof is not the value of £5; (ii) Agreement or memorandum for the hire of any labourer, artificer, manufacturer, or menial servant; (iii) Agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise; (iv) Agreement or memorandum made between the master and mariners of any ship or vessel for wages on any voyage coastwise from port to port in the United Kingdom; (v) Agreement entered into between a landlord and tenant pursuant to sub-s. 6 of s. 8, or sub-s. 2 of s. 20 of the Land Law (Ireland) Act, 1881. (54 & 55 Vict. c. 39.)

(*a*) Story, Conflict of Laws, §§ 424, 428.

(*b*) *Forbes* v. *Cochrane*, 2 B. & C., 471; *Gompratte* v. *Young*, 4 De G. & Sm., 217; *Huber* v. *Steiner*, 2 Sc., 304; *Leroux* v. *Brown*, 22 L. J. C. P., 1.

Mortgages of Stock Chargeable as Agreements.

Every instrument under hand only, not being a bill or promissory note, given (i) on deposit of any share or stock warrant or certificate, or any security for money transferable by delivery, by way of security for a loan, or (ii) making redeemable or qualifying a duly stamped transfer, intended as a security, of any registered stock or marketable security, shall be deemed to be an agreement and chargeable with duty accordingly ; but a release or discharge of any such instrument shall not be chargeable with any *ad valorem* duty (54 & 55 Vict. c. 41, § 23).

Legal Definitions of Time.

The term "month" is understood in commercial matters to be a *calendar* month and not a *lunar* month, unless (in the case of agreements in writing) it appears from the general context that a lunar month was intended (*a*). In any contract for the sale of goods, it is expressly provided by statute that "month" means *primâ facie* a calendar month (see *post*, p. 193).

Whenever any expression of time occurs in an Act of Parliament, deed, or other legal instrument, the time referred to is to be held, unless otherwise specifically stated, to be Greenwich mean time in the case of Great Britain, and Dublin mean time in the case of Ireland. (43 & 44 Vict. c. 9.)

Penalty on Unqualified Persons Preparing Legal Documents.

Any person other than a barrister, solicitor, law agent, writer to the signet, notary public, conveyancer, special pleader, or draftsman in equity, who for or in expectation of any fee or reward draws or prepares any instrument relating to real or personal estate, or any proceeding in law or equity, is liable to a fine of £50. But this provision does not extend to any public officer preparing instruments in the course of his duty, or to a person employed merely to engross documents ; and the expression "instrument" is not to include a will or codicil, or an agreement under hand only, or a power of attorney, or a transfer of stock containing no trust or limitation thereof. (54 & 55 Vict. c. 41, § 44.)

Unstamped Agreement, when Admissible.

A document which purports to be an agreement, and which is valid upon the face of it, but which is tendered in evidence to show the transaction with which it is connected to be *a fraud*, is admissible in evidence although unstamped (*b*).

(*a*) *Lang* v. *Gall*, 1 M. & S., 111 ; *Cockell* v. *Gray*, 6 Moore, 486.

(*b*) *Keable* v. *Payne*, 8 A. & E., 555 ; *Holmes* v. *Sixsmith*, 21 L. J. Ex., 313.

And by the Stamp Act, 1891 (54 & 55 Vict. c. 39, § 14), upon the production of an unstamped or insufficiently stamped instrument as evidence in any court of civil judicature in the United Kingdom, or before any arbitrator or referee, if the instrument is one which may be stamped after execution, it may, on payment to an officer of the court or to the arbitrator or referee, of the amount of the unpaid duty, with the penalty payable, and a further sum of £1, be received in evidence ; but save as aforesaid, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever unless duly stamped (*a*).

Use of Adhesive Stamps.

Ordinary adhesive postage and revenue stamps may be used for stamping the following documents, and one or more stamps may be used to make up the amount chargeable :—

Agreements, under hand only, where liable to the duty of 6d.
Cheques or Bills for payment of money *on demand* (duty 1d.).
Certified copies of Registers of Births, &c. (duty 1d.).
Charter Parties (duty 6d.).
Contract Notes of sale of stock or security of less value than £100 (duty 1d.).
Delivery Orders (duty 1d.).
Lease or Agreement for Lease, for term not exceeding a year—
(*a*) Of a Dwelling-house, or part of a Dwelling-house, at a rent not exceeding the rate of £10 a year (duty 1d.).
For term less than a year—
(*b*) Of a Furnished Dwelling-house or Apartments (duties 6d., 1s., 1s. 6d., 2s., and 2s. 6d., according to the rent).
Letters of Renunciation (duty 1d.).
Notarial Acts (duty 1s.).
Policies of Insurance, not Life or Marine (duty 1d.).
Protests of Bills of Exchange or of Promissory Notes (duties 1d., 2d., 3d., 6d., 9d., in agreement with the duty on the Bill or Note, and 1s. when the Bill or Note is stamped with 1s. or upwards).
Proxies (where duty 1d. only).
Receipts (duty 1d.).
Transfers of Shares in Cost Book Mines (duty 6d.).
Voting Papers (duty 1d.).
Warrants for Goods (duty 3d.).

The use of ordinary adhesive stamps is strictly limited to the documents here enumerated, and their use in respect of any other document will not afford protection from penalties.

The adhesive stamp or stamps so used must be cancelled at the time by writing the signature or initials and date across each stamp.

(*a*) Notwithstanding this provision, when, upon the trial of an action for money lent, an insufficiently stamped promissory note, purporting to be signed by the defendant, was put into his hands by the plaintiffs' counsel for the purpose of refreshing his memory and obtaining an admission of the loan, it was held that the plaintiffs were entitled to use the note for that purpose (*Birchall* v. *Bullough*, L. R. [1896] 1 Q. B. 325).

Death of Parties to a Contract.

A contract is not necessarily dissolved by the death of either of the parties to it: all the rights and benefits of the deceased person survive to his executors or personal representatives; who can sue the survivor, if he fail to perform his part of the contract; and the survivor can sue the executors if they fail to perform the contract on the part of the deceased (*a*).

But contracts founded exclusively on the personal skill and intellectual capacity of the deceased die with him (*b*).

Lost or Destroyed Deeds.

In cases of lost or destroyed deeds, a Court of Equity will relieve; and where the deed is concealed, the Court will order the Plaintiff to hold and enjoy the land until the Defendant produce the deed or admit its destruction (*c*).

Statute of Frauds.

The law of contracts is in many respects based on the Statute of Frauds (29 Ch. II. c. 3), by § 4 of which Act it is enacted that no Action shall be brought, whereby to charge any person upon any contract or sale of lands, tenements, and hereditaments, *or any interest in or concerning them*, unless the agreement upon which such Action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised. By the same section the like provision is made with regard to agreements which are *not to be performed within one year* from the making thereof.

So much of the Statute of Frauds as related to the sale of "goods, wares, and merchandises," as well as the amending section (§ 17) of Lord Tenterden's Act (9 Geo. IV. c. 14), has been repealed by the Sale of Goods Act, 1894 (see *post*, p. 192).

Contracts by Letters sent by Post.

A contract established through the medium of letters may be enforced in specie; but it must be a complete and concluded contract. When a proposal is sent by letter to another, if the other accept it, the contract will be concluded by his sending an answer to that effect. The contract is complete on the posting of the letter accepting the terms offered by the other,

(*a*) *Bishop* v. *Curtis*, 18 Q. B., 878; *Timmis* v. *Platt*, 2 M. & W., 720.
(*b*) *Chamberlain* v. *Williamson*, 2 M. & S., 408.
(*c*) Story, §§ 81, 82.

and this although such letter never reach its destination (*a*). But it has been held that if the letter does not in fact reach the person who made the offer, the mere proof of posting the letter accepting it is not sufficient (*b*).

In a case where the Defendants wrote to the Plaintiffs offering them merchandise at a fixed price, "they receiving an answer in the course of post," it was held that there was a binding contract of sale the moment the offer was accepted, and that the Defendants were not at liberty to retract their offer before the arrival of the time for receiving the answer. "Otherwise," it was observed, "no contract could ever be completed by post" (*c*).

Destruction by Fire of Goods before Delivery.

Where a person has bought goods and paid, or partly paid, for them, but allows them to remain on the seller's premises, and a fire occurs whereby they are burnt, the buyer must bear the loss; unless, by the terms of the contract (see now § 20 of Sale of Goods Act, *post*, p. 192), it can be implied that the seller was to be liable in such an event (*d*).

Giving Credit.

If a customer on first dealing with a tradesman gets a promise of credit, say for three, six, or twelve months, the customer has a right to infer that all subsequent transactions will be upon the same terms of credit; and unless the tradesman has expressly intimated at the time of such subsequent dealings that he will not sell the goods upon credit, he cannot recover the price until the credit time has elapsed (*e*).

Stoppage in transitu.

Stoppage *in transitu* can only take place whilst the goods are on their way to the buyer. It has been held that they are *in transitu* so long as they are in the hands of the carrier as such; and also so long as they remain in any place of deposit connected with their transmission (*f*).

The test of the consignor's right of stoppage is not whether the voyage is at an end, but whether there has been a delivery

(*a*) *Dunlop* v. *Higgins*, 1 H. L., 381; *Duncan* v. *Topham*, 8 C. B., 225; see also *Impl. Land Co. of Marseilles, Harris's Case*, 41 L. J. Ch., 621.

(*b*) *Brit. and Amer. Teleg. Co.* v. *Colson*, 40 L. J. Ex., 97; see also *Constantinople, &c., Hotels Co., In re*, 40 L. J. Ch., 39.

(*c*) *Adams* v. *Lindsell*, 1 B. & Ald., 681.

(*d*) *Martineau* v. *Kitching*, 41 L. J. Q. B., 227.

(*e*) *Paul* v. *Dod*, 2 C. B., 800; *Price* v. *Nixon*, 5 Taunt., 338; *Ford* v. *Yates*, 2 Sc., N. R., 645.

(*f*) *Lickbarrow* v. *Mason*, 1 Smith, L. C. (9th ed.).

of the goods to the consignee. In order to create a *constructive delivery* there must be a fresh agreement between the parties as to holding or delivering the goods. Where G. shipped linseed from Smyrna to W. in London, by a general ship: W., having obtained the bill of lading, mortgaged the cargo, and subsequently, before the ship's arrival, became bankrupt: W.'s mortgagees, after the ship had arrived, obtained a delivery order for the linseed, and handed it to an officer on board the ship, who promised to deliver the linseed to them when he got it clear. Held, that this did not amount to a constructive delivery of the goods, and that the consignor's right of stoppage *in transitu* remained (*a*).

Where possession has not actually or constructively been given under a delivery order or a dock warrant, the vendor may countermand the order or warrant if the purchaser become insolvent before payment (*b*).

Goods on Sale or Return.

When goods are sold under a contract of "sale or return," the sale is a conditional or defeasible sale. If the goods are returned or tendered back within a reasonable time the sale is annulled and the vendor cannot recover the price of them, but if the purchaser, having obtained possession of the goods, fail to return them within a reasonable time, the contract is discharged of the condition that they are returnable, the sale stands as an absolute sale, and the price of the goods may be recovered in an Action for goods sold and delivered (*c*).

Hire-and-Purchase System.

All persons should be very cautious as to entering into agreements on the "hire-and-purchase" system. They are, in fact, among the most dangerous agreements a person can put his hand to; for if after paying nearly all the instalments, the purchaser makes default by not being ready with his money on the very day on which the instalment falls due, the whole of his previous payments may be forfeited, and the goods also.

A case is reported where a person entered into an agreement of the kind for the "hire and purchase" of a piano at the price of £60, to be paid for by 12 monthly instalments of £5 each. After the hirer had paid the first ten instalments, he was not ready with his money for the two last on the actual days on which they fell due; but he tendered them on a subsequent

(*a*) *Coventry* v. *Gladstone*, 37 L. J. Ch., 492.
(*b*) 1 Smith, L. C. (9th ed.).
(*c*) *Moss* v. *Sweet*, 16 Q. B., 493; 20 L. J. Q. B., 167.

day, when they were refused. The firm who supplied the piano seized it and kept the whole of the instalments, amounting to £50, which had been previously paid. It was held by the Court that there was "no equity" to compel them to return any of the money or to give up the piano, although the remaining £10 had been tendered (*a*).

On the other hand, if any such agreement be assigned by the vendors of the goods, it should be done with all proper formalities. Some furniture dealers deposited with a creditor as security for his debt a hire-purchase agreement, by which they had let certain furniture to be paid for by half-yearly instalments, with the usual conditions. No notice of the assignment was given to the hirer. Before the second instalment fell due the dealers became bankrupt, and it was held that, no notice of the assignment having been given, the trustee in bankruptcy was entitled to the benefit of the agreement (*b*).

It has been held by the Court of Appeal (so construing § 9 of the Factors Act, 1889), that where a person, purchasing goods from a vendor who had them only on a hire-and-purchase agreement, bought them in good faith, not knowing of the agreement, the purchaser had a good title as against the person who had let the goods on hire (*c*).

And where a person who had obtained a piano on a hire-and-purchase agreement pawned the instrument before he had paid the full number of instalments under the agreement, the Court of Appeal held that he had "agreed to buy" the piano within § 9 of the Factors Act, 1889, and therefore that the pledge was valid (*d*).

This decision, however, has been overruled by the House of Lords, who held that the expression in § 9 of the Factors Act, 1889, "a person having agreed to buy goods," means a person who has bound himself by agreement to buy, and does not include a person who (as in the case of the hiring agreement in question) has an option to buy, the owner being bound to sell if the option is exercised. A hirer under such a form of agreement cannot, therefore, pass a good title in the goods (*d*).

As to obtaining restitution of property, possession of which has been acquired under a hire-and-purchase agreement, and which has been wrongfully disposed of, see *ante*, p. 95 (*note*).

The custom of furnishing hotels upon the hire-and-purchase system is now so well recognised that the Courts will

(*a*) *Cramer* v. *Giles*, 1 Cab. & Ellis, 151.
(*b*) *Ex parte Rawlings, In re Davis* (1); 37 W. R. Q. B. D., 141.
(*c*) *Lee* v. *Butler*, L. R. (1893) 2 Q. B. 318.
(*d*) *Helby* v. *Matthews*, C. A. (1894) 2 Q. B., 262; H. L. [1895], A. C. 471.

take judicial notice of the custom: and, therefore, upon the bankruptcy of a hotel-keeper, furniture held by him under such an agreement will not be deemed to be "in the order and disposition" of the bankrupt within the meaning of the Bankruptcy Acts (*a*).

Contracts for Work done and Services rendered.

Generally every workman who devotes time and labour to the service of an employer is entitled to be paid for it; but where the terms of the contract are such as to make the remuneration contingent upon the completion of the work, a partial performance of the work will not alone give any claim against the employer (*b*). But as soon as the work is completed the workman has a right of Action for his remuneration.

Where work is done by one party under a special contract, but not according to its terms, the other may refuse to accept it: but if he do accept it and take the benefit of it he may be sued for the value (*c*).

Where the work is of such nature that it cannot be rejected, so that the employer has no option in accepting it, he is not necessarily liable for the value; as for instance, work done under a building contract upon the Defendant's land (*d*).

If the contract is for the manufacture of a specific article, to be delivered within a certain time, then time is of "the essence of the contract," particularly if it be to enable the Plaintiff to complete a contract previously made with a third party. In these cases, although the Defendant is entitled to some remuneration, the Plaintiff is also entitled to recover of the Defendant the extra cost of obtaining another article, to enable him to complete his contract with the third party (*e*).

Building Contracts.

If a contract be entered into with a builder to build a house for a specific sum, and it is stipulated in the contract that the builder shall not be entitled to be paid upon the contract until the architect or surveyor has given his certificate that the work has been performed in accordance with the contract, the builder cannot sue for payment under the contract until the certificate has been given by the architect or surveyor (*f*).

(*a*) *Crawcour* v. *Salter*, 18 L. R. Ch. D., 30.
(*b*) *Cutter* v. *Powell*, 2 Smith, L. C., 1; 6 T. R., 320.
(*c*) *Burn* v. *Miller*, 4 Taunt., 745.
(*d*) *Ellis* v. *Hamlin*, 3 Taunt., 52; *Munro* v. *Butt*, 8 E. & B., 731.
(*e*) *Portman* v. *Middleton*, 27 L. J. C. P., 231.
(*f*) *Scott* v. *Liverpool Corp.*, 25 L. J. Ch., 230.

If the certificate be fraudulently, collusively, or corruptly withheld, the Court will give relief against the parties who are liable to pay; and an Action may, in some cases, be brought against the architect or surveyor for the tort (*a*).

Substantial Performance of Building Contracts.

Where a contract has been made for building a house for a sum to be paid on completion of the contract in accordance with certain plans and specifications, it is not absolutely essential that it should have been entirely and precisely performed in every particular. If the builder can show that it has been substantially performed, he may generally recover the amount. And if there be some parts of the contract not fully performed, a Jury must estimate the amount earned by the builder (*b*).

Deviations from Building Contracts: Extras.

If by direction or consent of the employer there has been a deviation from the original plan, the contract does not become inoperative, but must be the rule of payment as far as followed. If, however, the original plan has been so materially deviated from that the contract cannot be traced, the builder may under such circumstances charge by measure and value.

For all work done, not the subject of the contract, though arising out of the same job, the builder may recover as if no contract had been made, provided it was done by the authority, consent, or request of the employer (*c*).

If extras have been done without any authority from the employer, the latter is not bound to pay for them (*d*).

If they are to be done only upon the direction in writing of the architect such direction must be obtained (*e*).

Agreement made while one of the Parties Intoxicated.

Specific performance will not be decreed of an agreement made whilst either party was in a state of intoxication, but the parties will be left to their remedy, if any, for damages. But although one of the parties had been drinking, yet if he possessed full understanding or knowledge of what he was doing, the contract may be enforced (*f*).

(*a*) *Milner* v. *Nield*, 5 Ex., 829.
(*b*) *Stavers* v. *Carling*, 3 Sc., 755.
(*c*) *Myers* v. *Sarl*, 30 L. J. Q. B., 9.
(*d*) *Dobson* v. *Hudson*, 26 L. J. C. P., 153.
(*e*) *Myers* v. *Sarl*, 30 L. J. Q. B., 9.
(*f*) Story, Eq. Jur., 230 *et seq.*

If goods are sold to a man when so drunk that he knows not what he is doing, the purchase may be repudiated as soon as he becomes sober (*a*).

If a man purchase goods when so drunk as not to know what he is doing, but keep them after he become sober, he cannot set up his drunkenness as a defence or answer to an Action for the price (*a*).

Contract made under Threats or Undue Influence.

Equity will relieve against acts done under duress, or under the influence of threats, or of real or imaginary terrors. It watches with the utmost jealousy contracts made by persons while under imprisonment; and if there be the slightest ground to suspect oppression or imposition it will set the contract aside (*b*).

In like manner, circumstances of extreme necessity and distress may so entirely overpower free agency, as to justify the Court in setting aside a contract on account of some oppression or fraudulent advantage attendant on it (*c*).

Sale of Goodwill.

The *mere sale* of, the goodwill of a business, without an express covenant restraining the action of the vendor after the sale, will not prevent the vendor from setting up a similar business, even next door to the purchaser (*d*).

But the assignment of the goodwill of a business includes the exclusive right as against the vendor and assignor to use the firm's name and style under which the business had been carried on previous to the assignment, even though the name of the vendor or assignor is the firm-name or part of the firm-name; and after such assignment the vendor may be restrained by Injunction from carrying on the same business in the name of the old firm (*e*); and if he has engaged to abstain from carrying on a similar business in the immediate neighbourhood, he will then be bound not to do so (*f*). Nor can he hold out to customers, or the public, that he is carrying on business in connection with, or continuation or succession to, the old firm (*g*).

(*a*) *Gore* v. *Gibson*, 13 M. & W., 623; *Molton* v. *Camroux*, 2 Ex., 487.
(*b*) *Boyse* v. *Rossborough*, 6 H. L., 2, 49.
(*c*) Story, Eq. Jur., 239.
(*d*) *Crutwell* v. *Lye*, 17 Ves., 346; *Churton* v. *Douglas*, 28 L. J. Ch., 841; *Leggott* v. *Barrett*, 51 L. J. Ch. App. 601.
(*e*) *Levy* v. *Walker*, L. R. 10 Ch. D. 436; 48 L. J. 273; *Churton* v. *Douglas*, 28 L. J. Ch., 841.
(*f*) *Crisdee* v. *Bolton*, 3 C. & P., 243.
(*g*) *Crutwell* v. *Lye*, 17 Ves., 335; *Churton* v. *Douglas*, 28 L. J. Ch., 841.

And where, on the sale and assignment of a business, there is a covenant restraining the vendor and assignor from carrying on the same trade anywhere else, it has now been decided that such a covenant, although in restraint of trade, is valid, the covenant being necessary for the protection of the purchaser and not being injurious to the public (*a*).

Until recently it was regarded as settled law (*b*) that even where the goodwill of a business was by the deed of partnership expressly reserved to one partner, another partner might on the expiration of the partnership canvass the old customers. This has now been altered by a decision of the House of Lords, confirming an injunction which had been granted against an outgoing partner, to whose co-partner the goodwill of the business had been expressly reserved, from taking copies of the names and addresses of the customers of the partnership, with the object of canvassing such persons and endeavouring to obtain their custom for himself (*c*).

Combinations amongst Traders.

Where some shipowners, trading between China and London, formed themselves into an association to keep up the rates of freight, offering a rebate to those shippers who consigned their cargoes exclusively by the vessels of the association, and on a particular occasion combined to lower their freights sufficiently to prevent the competition of a rival firm of shipowners not in the association, the latter sued the associated shipowners for damages for conspiracy. But it was held by the Court of Appeal, and the decision has been confirmed by the House of Lords, that the combination entered into by the Defendants, being merely an act of competition done in the interests of their own trade, and not from malice or personal ill-will towards the Plaintiffs, an action of conspiracy would not lie (*d*).

Warranties.

A warranty is a guarantee from a seller to a buyer that an article sold is of a particular kind or quality.

The general rule of law as to all sales of goods is, that the purchaser buys at his own risk: and therefore the maxim

(*a*) *Maxim-Nordenfeldt Guns and Ammunition Co.* v. *Nordenfeldt* (*No.* 1), C. A., (1893) 1 Ch. 630; H. L. E. (1894) W. N. 151.

(*b*) See *Pearson* v. *Pearson*, L. R. 27 Ch. D., 145, the reasoning in which was overruled in *Trego* v. *Hunt* (see next foot-note).

(*c*) *Trego* v. *Hunt*, H. L. E. (1896) A. C. 7.

(*d*) *Mogul Steamship Co.* v. *McGregor*, 21 L. R. Q. B. D., 544; C. A., 756 H. L. (E.) 1892, A. C., 95.

"*Caveat emptor*" (Let a purchaser beware). This rule prevails as to the sale of goods in market overt, or on inspection, unless the vendor give an express warranty, or unless the law imply a warranty from the nature of the thing sold and the circumstances of the sale: or unless the vendor be guilty of a fraudulent representation or concealment with regard to the thing sold.

As to an "express warranty." Every affirmation made by the vendor, at the time of sale, in relation to the goods, amounts to a warranty, provided it appear by the evidence to be so intended.

Where an express warranty is couched in technical terms, it is to be interpreted according to their technical signification, unless they be manifestly used in a different sense and differently understood by the buyer.

A general warranty does not extend to patent defects which are apparent upon due inspection, nor to defects which are, at the time, known to the buyer.

And see now the provisions of the Sale of Goods Act, 1893 as to warranties (*post*, p. 193).

Misrepresentation and Concealment.

Misrepresentation (whereby an unfair contract has been made) is a ground for relief in equity; whether the party who made the assertion knew it to be false or not (*a*). Concealment of facts is also a ground for relief. Misrepresentation, whether by word or deed, constitutes fraud; but equity will not interfere if the misrepresentation was in a trifling or immaterial point; or if no injury arose from it (*a*).

Upon a sale of pictures or other chattels, where there is no express warranty but only a representation, the seller will not be answerable although the representation prove to be untrue, if he believed it to be true.

Fraudulent Misrepresentation and Deceit.

These being wrongful in the eye of the law, are actionable, if damage result therefrom. But no Action can be supported for the telling of a bare naked lie, unless it be attended with damage (*b*). If, therefore, a falsehood be knowingly told, with an intention by the utterer that another person shall believe it to be true, and act upon it, and that other person does believe and act upon it, and suffers damage in consequence, the party

(*a*) *Pulsford* v. *Richards*, 17 Beav., 95.
(*b*) *Pasley* v. *Freeman*, 3 T. R., 65; *Collins* v. *Cave*, 30 L. J. Ex., 55.

so telling the falsehood with the intention aforesaid, is responsible in damages in an Action for the deceit (*a*).

Where a person having a gun for sale represented to a customer that it might be used with safety and was by a certain eminent maker—which latter representation was false to the knowledge of the seller—the customer, acting upon the faith of the representations being true, bought the gun for the use of his son, and on its being used by his son the barrel burst and injured him; in an Action by the son against the seller, it was held, that the latter was liable in damages for the deceit (*b*). But where there is no fraud on the part of the party selling an article of the kind, then, although the article turn out contrary to the representation of the seller, and a third party is injured in consequence, an Action will not lie (*c*).

In these cases it is not always necessary to show that the Defendant knew the representation to be untrue; if he made the statement for a fraudulent purpose, and without believing it to be true, and with the intention of inducing the Plaintiff to do an act, and that act is done to Plaintiff's prejudice, an Action for damages is maintainable (*d*).

Misrepresentation as to the Credit of a Person.

By the Act 9 George IV. c. 14, § 6, no action shall be brought to charge any person by reason of any representation made concerning the "conduct, credit, ability, trade, or dealings" of any other person, to the intent that the latter may obtain credit, money, or goods, unless such representation be made in writing signed by the party to be charged therewith.

And where a bank manager made a representation in writing as to the credit of a customer, who had referred a party to the bank, and the latter, relying on the representation being true, gave the customer credit and lost his money; it was held that the bank was liable in damages to the applicant (*e*).

But where a bank manager, without consulting his principals, wrote making misrepresentations, and signed his name as "manager," it was held that although he had acted within the scope of his authority, the principals were not responsible for the representation, it not having been signed by them, as the party to be charged therewith, within the meaning of the statute (*f*).

(*a*) Com. Dig., Ar. Deceit, A. 9, 10.
(*b*) *Levy* v. *Langridge*, 4 M. & W., 337.
(*c*) *Longmeid* v. *Holliday*, 6 Ex., 761.
(*d*) *Taylor* v. *Ashton*, 11 M. & W., 415.
(*e*) *Swift* v. *Winterbotham*, 42 L. J. Q. B., 111.
(*f*) *Swift* v. *Jewsbury*, L. R. 9 Q. B., 301.

SECTION VI.—SALE AND PURCHASE OF GOODS.

Sale of Goods Act, 1893.

A bill on this subject ("for codifying the law relating to the sale of goods"), after being several years before Parliament, became law under the above title in 1894, and the main provisions of the Act (56 & 57 Vict. c. 71) are subjoined (*a*).

Contract of Sale.—(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. There may be a contract of sale between one part owner and another. (2) A contract of sale may be absolute or conditional. (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell. (4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred (§ 1).

Where necessaries are sold and delivered to an infant or minor or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor. Necessaries mean goods suitable to the condition in life of such infant or minor or other person, and to his actual requirements at the time of the sale and delivery (§ 2).

Formalities of the Contract.—A contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties. But nothing in this section is to affect the law relating to corporations.

A contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf; and these provisions apply to every such contract, notwithstanding that

(*a*) The Act is stated (§ 63) to "come into operation" on 1st January, 1894, but it was not passed until 20th February, 1894.

the goods may be intended to be delivered at some future time, or may not at the time of such contract be ready for delivery. There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognises a pre-existing contract of sale. This section is not to apply to Scotland.

Subject matter of Contract.—(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called "future goods." (2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen. (3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void (§ 6); and where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided (§ 7).

The Price.—The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties. Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case (§ 8).

Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided; provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor. Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault (§ 9).

Conditions and Warranties.—Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. In a contract of sale "month" means *primâ facie* calendar month (§ 10).

In England or Ireland, (1) where a contract of sale is subject

to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating the contract as repudiated; (2) whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages only, depends in each case on the construction of the contract; (3) where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or where the contract is for specific goods, the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract, express or implied, to that effect (§ 11).

In Scotland, failure by the seller to perform any material part of a contract of sale is a breach of contract, which entitles the buyer either within a reasonable time after delivery to reject the goods and treat the contract as repudiated, or to retain the goods and treat the failure to perform such material part as a breach which may give rise to a claim for compensation or damages (§ 11).

In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass; also an implied warranty that the buyer shall have and enjoy quiet possession of the goods; and an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made (§ 12).

Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

There is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:—(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to

show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply, there is an implied condition that the goods shall be reasonably fit for such purpose ; provided that on the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose. (2) Where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality ; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed. (3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. (4) An express warranty or condition does not negative a warranty or condition implied by the Act unless inconsistent therewith (§ 14).

Sale by Sample.—A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect ; and in the case of such a contract, there is an implied condition that the bulk shall correspond with the sample in quality ; also an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample ; and an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample (§ 15).

Transfer of Property as between Seller and Buyer.—Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained (§ 16).

Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred, and for the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case (§ 17).

Unless a different intention appears, the "rules for ascertaining intention," set out in the Act, shall be the rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer (§ 18).

(1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may reserve the right of disposal of the goods until

certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to the buyer, or for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions are fulfilled. (2) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *primâ facie* deemed to reserve the right of disposal. (3) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him (§ 19).

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer; but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not; but where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault (§ 20).

Transfer of Title.—Where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell; but nothing in the Act is to affect the provisions of the Factors Acts (§ 21).

Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods provided he buys them in good faith and without notice of any defect or want of title on the part of the seller, but nothing in this section shall affect the law relating to the sale of horses (§ 22). (This section is not to apply to Scotland.)

When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith without notice of the seller's defect of title (§ 23).

Where a person having sold goods continues or is in possession of the goods, or of the documents of title, the delivery by him of the goods or documents under any sale or pledge to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if authorised by the owner of the goods; and where a person having bought or agreed to buy goods obtains, with the consent of the seller,

possession of the goods or the documents of title, the delivery by him of the goods or documents under any sale or pledge to any person receiving the same in good faith and without notice of any lien of the original seller, shall have the same effect as if the person making the delivery were a mercantile agent (within the meaning of the Factors Acts) in possession of the goods or documents of title with the consent of the owner (§ 25).

Performance of the Contract of Sale.—Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if he accepts the goods he must pay for them at the contract rate; and where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole, but if he accepts the whole he must pay for them at the contract rate. Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description, the buyer may accept the goods in accordance with the contract and reject the rest, or he may reject the whole. The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties (§ 30).

Where the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, for the purpose of transmission to the buyer, is *primâ facie* deemed to be a delivery to the buyer, but unless otherwise authorised by the buyer, the seller must make a reasonable contract with the carrier on behalf of the buyer. If he omit so to do, and the goods are lost or damaged in course of transit, the buyer may hold the seller responsible. Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them, or the goods will be deemed to be at his risk during such sea transit (§ 32).

Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit (§ 33).

Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them (§ 34).

The buyer is deemed to have accepted the goods when he

intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after a reasonable time, he retains the goods without intimating to the seller that he rejects them (§ 35).

Rights of unpaid Seller against the Goods.—The seller of goods is deemed to be an "unpaid seller" when the whole of the price has not been paid or tendered; or, when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise (§ 38).

Notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law (1) a lien on the goods or right to retain them for the price while he is in possession of them; (2) in case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with possession of them; (3) a right of re-sale as limited by this Act; and where the property in goods has not passed to the buyer, the unpaid seller has a right of withholding delivery (§ 39).

The unpaid seller of goods is entitled to retain possession of them until payment or tender of the price (1) where the goods have been sold without any stipulation as to credit; (2) where the goods have been sold on credit, but the term of credit has expired; (3) where the buyer becomes insolvent; and he may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee or custodier for the buyer (§ 41). And where he has made part delivery, he may exercise his right of lien or retention on the remainder unless he has received his lien (§ 42).

The unpaid seller of goods loses his lien (1) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods; (2) when the buyer or his agent lawfully obtains possession of the goods; (3) by waiver thereof: but he does not lose his lien or right of retention by reason only that he has obtained judgment for the price of the goods (§ 43).

The unpaid seller may exercise his right of stopping *in transitu* either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are, and when notice of stoppage *in transitu* is given by the seller to the carrier, or other bailee in possession of the goods, he must re-deliver the goods to the seller, but at the seller's expense (§ 46).

The unpaid seller's right of lien or retention or stoppage *in transitu* is not affected by any sale, or other disposition of the goods by the buyer, unless a document of title to goods has been lawfully transferred to any person, and that person transfers the document to another person in good faith and for valuable consideration, and if such transfer was by way of pledge for value, the unpaid seller's rights can only be exercised subject to the rights of the transferee (§ 47).

Sales by Auction.

(1) Where goods are put up for sale by auction in lots, each lot is *primâ facie* deemed to be the subject of a separate contract of sale:

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner, and until such announcement is made any bidder may retract his bid:

(3) Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person, and any sale contravening this rule may be treated as fraudulent by the buyer:

(4) A sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller. Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction (§ 58).

Competitive Sales of Goods.

As a general rule a trader may sell at any price whatsoever any goods, including those of another person's manufacture, and may offer the same for sale at any price by advertisement or otherwise, even though he thereby damages the trade of the manufacturer. Thus in a case where the defendant, a retail dealer, advertised for sale a new piano of the plaintiffs' manufacture at the price at which the plaintiffs supplied the trade, and thereby caused other dealers to give up dealing with them, and persisted in continuing the advertisement after he ceased to have any of the plaintiffs' pianos in stock and the plaintiffs had refused to supply him, it was held that the plaintiffs had no right of action (*a*).

(*a*) Per Stirling, J., in *Ajello* v. *Worsley* [1898], 1 Ch. 274.

SECTION VII.—MONEY AND SECURITIES FOR MONEY.

(i.) PAYMENT OF MONEY.

Legal Tender.

In the case of copper and silver, the maximum amounts which a person can be compelled to receive are, where the tender is wholly or partly in copper, 1*s.*; where the tender is wholly or partly in silver, 40*s.* (33 Vict. c. 10, § 4). A tender may be up to any amount in gold coin or Bank of England notes payable to bearer on demand.

A tender in provincial or country bankers' notes, or by cheque or draft, is valid if the creditor do not at the time object to receive such notes, cheque, or draft, on account of their *quality*, but objects to the amount only. To constitute a valid tender, there must be an actual production of the money, or its production expressly dispensed with (*a*).

Money Wrongly Paid or Extorted.

Money paid under protest can be recovered back again if it was illegally demanded, and if the party paid it to avoid immediate consequences (*b*).

If a person has obtained money from another by deceit, extortion, oppression, or imposition, or in mistake, the former may be compelled to refund it.

For instance, where a man, having a claim or lien to a certain amount on goods or securities in his possession, refuses to give them up unless he is paid more than he is strictly entitled to; or having no claim or lien upon them, wrongfully refuses to give them up without being paid for so doing; and the owner is obliged to pay and satisfy the extortionate demand, money so obtained may be recovered by an Action for "money had and received by the Defendant for the use of the Plaintiff" (*c*).

So also where a carrier makes excessive charges for the conveyance of goods, and the consignee in order to get possession of the goods pays the extortionate demand (*d*).

So if an account is settled by the payment of money, and it afterward appears to have been incorrect, whether the error was caused by mistake or by fraud, it may be reopened (*e*).

(*a*) *Kraus* v. *Arnold*, 7 Moore, 59; *Finch* v. *Brook*, 1 Sc., 70.
(*b*) *Glynn* v. *Thomas*, 11 Ex., 878. (*c*) *Astley* v. *Reynolds*, 2 Sr., 915.
(*d*) *Ashmole* v. *Wainwright*, 2 Q. B., 837; *Parker* v. *B. & E. Rail. Co.* 20 L. J. Ex. 442.
(*e*) *Williamson* v. *Barbour*, 9 Ch. D., 526.

If an extortionate demand is accompanied by threats, and the money is paid through fear, it amounts to larceny; as in a case where a travelling grinder demanded 5*s.* 6*d.* for grinding six knives, which the prosecutrix paid through fear on account of the prisoner's threats (*a*).

So, also, where a woman entered a room where a "mock auction" was being held, and the auctioneer knocked down a lot to her, for which she had not bid, as he well knew, and she at first refused to pay or take the lot, but afterwards, under threats and in fear, paid for the lot and took it away, the auctioneer was convicted of larceny (*b*).

Proffer of Cheque "in settlement."

When a cheque is sent by a debtor, with an intimation that it is sent "in settlement" of a claim, it is a mistake to suppose (as is sometimes assumed) that the creditor must return the cheque if he maintains that a larger amount is due to him. In two cases that went to the Court of Appeal, the defendant in each case had sent to the plaintiff a cheque for a smaller amount than was claimed, stating that it was intended to be "in settlement." The plaintiffs, however, replied, respectively, that they accepted the cheques on account, and in each case it was held that the plaintiff was not precluded from suing for the balance of his claim (*c*).

Interest.—Usury.

Formerly no higher rate of interest than 5 per cent. per annum could be legally enforced. But by 17 & 18 Vict. c. 90, the then existing laws against usury were repealed; and it is now lawful to lend money at any agreed rate of interest. The Court of Chancery, however, has frequently, under special circumstances, relieved persons not fully competent to protect themselves against unconscionable bargains; as where a young man, just of age, had contracted loans at the rate of 60 per cent. per annum (*d*).

If a debt is not payable under any instrument in writing, the creditor, in order to be entitled to interest, must make a demand of the debt in writing, and in such demand give notice that interest will be claimed from the date of such demand until payment (3 & 4 Will. IV. c. 42, § 28).

(*a*) *Reg.* v. *Lovell*, 8 Q. B. D., 185; 50 L. J. M. C., 91.
(*b*) *Reg.* v. *Macgrath*, 39 L. J. M. C., 7.
(*c*) *Miller* v. *Davies*, 58 L. J. R. Q. B., 293; and *Day* v. *M'Lea*, L. R., 22 Q. B. D., 610, 612.
(*d*) *Earl of Aylesford* v. *Morris*, 42 L. J., Ch., 146

Sending Remittances by Post.

In an old case it was decided that if a purchaser be directed to send the amount of his purchase-money by post, or if it should be the usual practice of the parties to do so, and a letter containing the money, properly directed and posted, be lost, the seller must bear the loss (*a*); but it is questionable how far the decision would hold good now, seeing that the transmission of money by post in unregistered letters is contrary to the regulations of the Post Office.

And it has been expressly decided that unless there has been a request by a creditor that payment be made to him by cheque sent through the post, any remittance made in that way will be at the risk of the sender; so that if the letter be stolen and never come to the hands of the creditor, the loss will be on the head of the debtor, notwithstanding that for a series of years he may have made a practice of periodically sending cheques by post to the same creditor (*b*).

Money left in Banker's Hands.

Where money in a bank is allowed to remain unclaimed for six years, without payment of interest or of any portion of the principal, or any acknowledgment in writing of the banker's indebtedness, its recovery will be barred by the statute (*c*).

Where Securities are Lost.

Payment of money due on a lost bond may be enforced in equity (*d*); and money due on a lost bill, negotiable note, cheque, or other unsealed security, may be recovered at law (17 & 18 Vict. c. 125, § 87).

If a negotiable bill be *destroyed*, the Action may nevertheless be maintained (*e*); for on proof of the loss or destruction of documents, secondary evidence of their contents may be given.

(ii.) BILLS OF EXCHANGE, CHEQUES, ETC.

A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person or to bearer.

(*a*) *Warwick* v. *Noakes*, Peake, 98.
(*b*) *Pennington* v. *Crossley* (1897); and see *Norman* v. *Ricketts*, 3 *Times* L. R. 182.
(*c*) *Pott* v. *Clegg*, 16 M. & W., 321.
(*d*) Story, §§ 81, 82.
(*e*) *Wright* v. *Lord Maidstone*, 24 L. J. Ch., 623.

No precise form of words is essential to the validity of a bill of exchange, provided it substantially complies with the above definition; but the bill must be an unconditional order (though it may be accepted conditionally), and it must not order any act to be done in addition to the payment of money, or it will not be a bill of exchange (*a*).

Receipts upon Bills of Exchange.

Receipts written upon bills or promissory notes were formerly exempt from the penny stamp duty; but now by the Finance Act, 1895 (58 Vict. c. 16), the duty is payable on such receipts as from 1st July, 1895; provided that neither the name of a banker (whether accompanied by words of receipt or not) written in the ordinary course of business upon a bill of exchange or note, nor the name of the payee written upon a draft or order, if payable to order, shall constitute a receipt chargeable with stamp duty.

Bills of Exchange Act, 1882.

By this enactment (45 & 46 Vict. c. 61) the law relating to bills of exchange, promissory notes and cheques was codified.

Validity of Bills of Exchange.—A bill is not invalid by reason that it is not dated; that it does not specify the value given, or that any value has been given, for it; nor that it does not specify the place where it is drawn or the place where payable (§ 3).

An inland bill is one that is both drawn and payable within the British Islands; or drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill (§ 4).

Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable (§ 9).

A bill is "payable on demand" which is expressed to be payable on demand, or at sight, or on presentation; or in which no time for payment is expressed (§ 10).

Where a bill is accepted or indorsed when overdue, it shall as regards the acceptor, who so accepts, or any indorser who so indorses, be deemed a bill payable on demand (§ 10).

A bill is not invalid by reason only that it is *ante-dated* or *post-dated*, or that it bears date on a Sunday (§ 13).

An acceptance is invalid unless written on the bill and signed by the drawee, but the signature of the drawee without additional words is sufficient (§ 17).

General and Qualified Acceptance.—A general acceptance

(*a*) Byles on Bills (14th ed.), 1.

assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. In particular, an acceptance is qualified, which is conditional, partial, or local. An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere (§ 19).

An acceptance in blank operates as a *primâ facie* authority to fill it up as a complete bill within a reasonable time, for any amount the stamp will cover (§ 20).

Capacity and Authority of Parties.—Where a bill is drawn or indorsed by an *infant, minor, or corporation* having no power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto (§ 22).

No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such; provided that where a person signs a bill in a trade or assumed name he is liable thereon, and that the signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm (§ 23).

A signature by procuration operates as notice that the agent has but a limited authority to sign; and the principal is only bound by such signature if the agent in so signing was acting within the limits of his authority (§ 25).

The Consideration for a Bill: Value, and Holder for Value.—Valuable consideration for a bill may be constituted by any consideration sufficient to support a simple contract, or by an antecedent liability. Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time. Where the holder of a bill has a lien upon it, he is deemed to be a holder for value to the extent of his lien (§ 27).

Accommodation Bill.—An accommodation party to a bill is a person who has signed as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not (§ 28).

The Holder.—A holder in due course is a holder who has taken a bill, complete and regular on the face of it, before it was overdue, and without notice of any previous dishonour, if any; who has taken it in good faith, and for value, without notice of any defect in the title of the person who nego-

tiated it. Such title is defective if the bill or the acceptance thereof was obtained by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration; or if it was negotiated in breach of faith or fraudulently (§ 29).

Negotiable Bills.—When a bill contains words prohibiting transfer, it is valid as between the parties thereto, but is not negotiable. A negotiable bill may be payable either to order or to bearer (§ 8).

Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein, and where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer (§ 7) (*a*).

A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder. A bill payable to bearer is negotiated by delivery. A bill payable to order is negotiated by the indorsement of the holder, completed by delivery (§ 31).

An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer (§ 34).

A special indorsement specifies the person to whom or to whose order the bill is to be payable (§ 34).

When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person (§ 34).

An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed; as for example—"Pay D only," or "Pay D for the account of X," or "Pay D or order for collection" (§ 35).

Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and no person then taking it can acquire or give a better title than that of the person from whom he took it (§ 36).

General Duties of the Holder.—Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument. Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment (§ 39).

Non-acceptance.—When a bill is duly presented for acceptance, and is not accepted within the customary time, it must

(*a*) See case of *Vagliano* v. *Bank of England*, pp. 207, 208, *post*.

be treated as dishonoured; otherwise the holder will lose his right of recourse against the drawer and indorsers (§ 42).

Presentment for Payment.—A bill must be duly presented for payment, otherwise the drawer and indorsers will be discharged. Where the bill is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its indorsement in order to render the indorser liable (§ 45).

Delay in presentment for payment is excused when caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence (§ 46).

When a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder (§ 47). But an Action cannot be brought to recover the amount until *after* the expiration of the days of grace. Thus, an action commenced by issue of a writ on the last day of grace failed (*a*).

Notice of Dishonour.—When a bill has been dishonoured by non-acceptance or non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged (§ 48).

Noting and Protest.—Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser (§ 51).

Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance, it must be duly protested for non-acceptance; and where such a bill which has not been previously dishonoured by non-acceptance is dishonoured by non-payment, it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest in case of dishonour is unnecessary (§ 51).

Liability of Acceptor.—When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable (§ 52).

In order to render the acceptor of a bill liable, it is not necessary to protest it, or that notice of dishonour should be given to him (§ 52).

The acceptor of a bill, by accepting it, engages that he will pay

(*a*) *Kennedy* v. *Thomas*, C. A. (1894) 2 Q. B., 759.

it according to the tenor of his acceptance; and is precluded from denying to a holder in due course, the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill; in the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of indorsement; in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement (§ 54).

The drawer of a bill, by drawing it, engages that on due presentment it shall be accepted and paid according to its tenor, and that if dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken; and is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse (§ 55).

The indorser of a bill, by indorsing it, engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided the requisite proceedings on dishonour be duly taken; and is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements; and is also precluded from denying to a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto (§ 55).

Banker paying Demand Draught whereon Indorsement is Forged.—When a bill payable to order on demand is drawn on a banker, who pays it in good faith in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee, or any subsequent indorsement, was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority (§ 60).

An important case has been before the Courts, in which as large a sum as £71,500 was at stake, being the amount of bills purporting to be drawn by a firm whose signature had been forged in favour of another firm whose signature had also been forged. The Plaintiff was a merchant in London, and a clerk in his employ forged the bills in question, and also forged letters of advice concerning them. These letters, with the fictitious bills, being from time to time put before him by the clerk, he accepted the bills as in the ordinary course. The

clerk then forged upon the bills the indorsement of the person named therein as payee, and also letters advising the Bank of England that the bills were coming in for payment, and he himself received payment for them across the counter. It was held by the judge at the trial, and subsequently by the Court of Appeal (two judges against one) that, the indorsements by the payee being forgeries, the bank was not entitled to debit the Plaintiff with the amounts paid. The House of Lords, however, held that the loss must fall on the clerk's employer and not on the bank, and that if the Bills of Exchange Act applied the bills were payable to bearer, as the words "fictitious or non-existent person" (§ 7, sub-section 3) included a real person who never had any right to the bills (*a*).

Alteration of Bill.—Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is voided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers; provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor. Any alteration of the date, the sum payable, or the time or place of payment, or the addition of a place of payment without the acceptor's assent, is a material alteration (§ 64).

Where an accommodation bill for £500 had been drawn on a stamp sufficient to cover £4,000, and in such a manner that alteration of the amount could be made without difficulty, and the acceptor accepted it for £500, the drawer afterwards fraudulently altered it to £3,500, for which sum it was taken in good faith by a bill-discounter. Upon its being presented for payment, the acceptor refused to pay more than £500, and was sued for £3,000. It was held that the acceptance of the bill on an excessive stamp and in the form as presented was not evidence of negligence, and that even if there was negligence the forgery of the drawer and not the negligence was the cause of the plaintiff's loss: and the action therefore failed (*b*).

Acceptance and Payment for Honour supra protest.—Where a bill has been protested for dishonour by non-acceptance, and is not overdue, any person, not being a party already liable

(*a*) *Vagliano* v. *Bank of England*, 23 L. R. Q. B. D., 243; H. L. (1891) App. Cas. 107.

(*b*) *Scholfield* v. *Earl of Londesborough*, (1894) 2 Q. B. 660; C. A. (1895) 1 Q. B. 536.

thereon, may, with the consent of the holder, intervene and accept the bill supra protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn (§ 65).

Lost Bill.—When a bill has been lost before it is overdue, the person who was the holder may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him. If the drawer refuses to give such duplicate bill, he may be compelled to do so (§ 69); and in an Action upon a bill, the Court may order that the loss of it shall not be set up if an indemnity be given (§ 70).

"Bill of exchange" in the Act includes bank-notes; and where it appeared that a Bank of England note for £1,000 had been lost for ten years—the evidence of loss being that the holder of the note, a man of drunken habits, who used to "flourish it about" in the street, came home "helplessly drunk" one night and said the next morning he had lost it—and after his death his administrator brought an action to enforce payment by the Bank, the Court refused to allow the Bank to set up the loss as a defence, and required them to take the course prescribed by § 69 of the Act, by giving the administrator another note and taking an indemnity from him for the lost note. No costs were allowed to either side (*a*).

Cheques on a Banker.

A cheque is a bill of exchange drawn on a banker payable on demand, and the provisions of the Act applicable to a bill payable on demand apply (§ 73).

Presentment of Cheque for Payment.—Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer suffers loss through the delay, he is discharged to the extent of such loss; and the holder of the cheque shall be a creditor of the banker in lieu of the drawer (§ 74).

Revocation of Banker's Authority to pay a Cheque.—The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by countermand of payment, or by notice of the customer's death (§ 75).

Crossed Cheques.—Where a cheque is crossed "& Co." between two transverse lines, or by two such lines only, and either with or without the words "Not negotiable," the cheque will be deemed crossed generally. Where it is crossed with the name of a banker, either with or without the words "Not negotiable," it will be deemed crossed specially, and to that banker (§ 76).

(*a*) *Gillett* v. *Bank of England*, reported in *Times* of 28th October, 1889.

Where a cheque is uncrossed, the holder may cross it generally or specially; and if crossed generally, he may cross it specially; and whether crossed generally or specially, he may add the words "not negotiable." Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection. Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself (§ 77).

A crossing authorised by the Act is a material part of the cheque: and it is unlawful to obliterate, or (except as authorised by the Act) to add to or to alter the crossing (§ 78).

Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection, being a banker, the banker on whom it is drawn must refuse payment (§ 79).

Where a person takes a crossed cheque which bears on it the words "Not negotiable," he shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had (§ 81).

When a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer's title is defective, he shall not incur any liability to the true owner of the cheque by reason only of receiving such payment (§ 82).

Like any other bill of exchange, a *post-dated* or *ante-dated* cheque is not invalid by reason only of being so dated, nor if it bear date on a Sunday (§ 13). But a post-dated cheque cannot be legally enforced until on or after the date which it bears.

Promissory Notes.

A promissory note is an unconditional promise in writing, made by one person to another, and signed by the maker thereof, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money, to or to the order of a specified person or to bearer. If payable to the maker's order, it must be indorsed by the maker (§ 83). It is inchoate and incomplete until delivery thereof to the payee or bearer (§ 84).

A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor. Where a note runs "I promise to pay" and is signed by two or more persons, it is deemed to be their joint and several note (§ 85).

Where a promissory note payable on demand has been indorsed, it must be presented for payment within a reasonable

time (according to the nature of the instrument, the usage of trade, or the facts of the particular case), or the indorser will be discharged (§ 86).

The maker of a promissory note engages to pay it according to its tenor, and is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse (§ 88).

I. O. U.

An I. O. U. is a distinct admission of a sum due, is evidence of an account stated, and of a promise to pay the amount to the person who is in possession of the document (*a*).

An Action may be brought upon an I. O. U. lawfully given; and the amount due thereon may be recovered: but not if given for an illegal or gambling debt (*b*).

An I. O. U. is admissible in evidence without bearing a stamp; but if, instead of being merely a simple acknowledgment of a debt, it goes on to state, "to be paid on such a day": for instance, "I. O. U. £40, to be paid on the 22nd instant," the latter words import a promise to pay on a particular day, and the document is in effect a promissory note, and must be stamped accordingly (*c*).

But where the I. O. U. is a simple acknowledgment of a loan or debt, not containing upon the face of it any express promise of payment, it does not require a stamp (*d*).

(iii.) BILLS OF SALE.

Essentials of a Bill of Sale.

What is commonly called a "bill of sale" is a conditional (as distinguished from an absolute) bill of sale, and is an assignment of goods and personal chattels made by the owner thereof to another person as a security for an existing debt or an advance of money made when the bill of sale is given.

The requirements of the law as to the drawing up, execution, and registration of bills of sale are very stringent, and need to be carefully observed. They are comprised in an Act of 1878 (41 & 42 Vict. c. 31), and an amending Act of 1882 (45 & 46 Vict. c. 43).

By the Act of 1882 any bill of sale not made in accordance

(*a*) *Gould* v. *Coombs*, 1 C. B., 543.
(*b*) *M'Kinnell* v. *Robinson*, 3 M. & W., 434.
(*c*) *Brooks* v. *Elkins*, 2 M. & W., 74.
(*d*) *Reardon* v. *Swabey*, 4 East, 183; *Blackwell* v. *M'Naught*[illegible], 1 Q. B 127.

with the form (*a*) given in that Act (§ 9), or made for a sum under £30 (§ 12), shall be void. The execution thereof by the grantor must be attested by one or more witnesses not being parties thereto (§ 10); and the consideration for which it is given must be truly stated, or it will be void (§ 8).

The consideration so stated must be the real consideration as between the grantor and grantee, though it is not necessary that every collateral bargain or stipulation connected with the money advanced should be set out (*b*). But where the consideration was stated to be £120, the fact being that £90 only was advanced, while £30 was "agreed to be retained for interest and expenses," it was held that the consideration was not truly stated (*c*). And in another case, where the amount of consideration was correctly stated, but the bill of sale contained incorrect recitals as to the time the advances were made, it was held void (*d*).

An incorrect statement in a bill of sale, as to the consideration, cannot be rectified by a reference to the receipt for the money (*e*).

There must be annexed to or written upon the bill of sale an inventory of all the chattels comprised therein: and the bill of sale will be void (except as against the grantor) in respect of any chattels not specified therein. And it will also be void (except as aforesaid) in respect of any chattels of which the grantor was not the true owner at the time of the signing thereof, although specified therein (§§ 4 and 5).

A bill of sale in which is included an assignment of future or after-acquired chattels, as well as an assignment in general terms of existing chattels upon the grantor's premises, other than those specifically described in the schedule, is void (*f*). And where the chattels were simply described as "household furniture and effects, implements of husbandry," it was held that this was an insufficient description (*g*).

Under the Act, a bill of sale will not be void in respect of growing crops, separately assigned or charged, if they were actually growing at the time the bill of sale was executed; nor

(*a*) The form given in the Act is to be obtained of law stationers.

(*b*) Ex parte *National Mercantile Bank*, in re *Haynes*, L. R. 15 Ch. D. 42; *Hamlyn* v. *Betteley*, L. R. 5 C. P. D. 327.

(*c*) Ex parte *Charing Cross Bank*, in re *Parker*, 16 Ch. D. 35; 50 L. J. 157.

(*d*) Ex parte *Carter*, in re *Threappleton*, 12 Ch. D. 908.

(*e*) Ex parte *Charing Cross Bank*, 50 L. J. Ch. 157.

(*f*) *Dunbar* v. *Baker*, 13 App. Cas. H. L., 506; 58 L. J. Q. B., 66.

(*g*) *Roberts* v. *Roberts*, 13 Q. B. D. 794; 53 L. J. 313.

in respect of fixtures, plant, or trade machinery, brought upon the premises in substitution for others specifically described in the schedule (45 & 46 Vict. c. 43, § 6).

By the Bills of Sale Act, 1891 (54 & 55 Vict. c. 35), an instrument creating any security on, or declaring trusts of, imported goods, given or executed at any time prior to their deposit in a warehouse, factory, or store, or to their being reshipped for export, or delivered to a purchaser not being the person giving or executing such instrument, is not to be deemed a bill of sale.

Where the grantor of a bill of sale gives it in a false name in order to conceal the fact of the bill having been given, the registration of the bill is not thereby rendered invalid (*a*).

A bill of sale will not protect chattels against a warrant of distress for taxes and parochial rates (45 & 46 Vict. c. 43, § 14); nor against a distress for rent.

Registration of Bills of Sale.

Every bill of sale must be registered in the mode required by the Act within seven clear days after execution; or if executed in any place out of England, then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after execution thereof (45 & 46 Vict. c. 43, § 8). If the seventh day falls on a Sunday, or other day on which the registrar's office is closed, the registration may be made on the next following day on which the office is open (41 & 42 Vict. c. 31, § 22).

The registration must be renewed once at least every five years, otherwise the registration will become void; but a renewal will not be necessary by reason only of the assignment of a bill of sale (41 & 42 Vict. c. 31, § 4).

When the residence of the person giving the bill of sale, or the chattels therein described, is or are in some place outside the London bankruptcy district, the registrar, within three days after registration in the principal registry, is to transmit an abstract of the bill of sale to the County Court registrar of the district (45 & 46 Vict. c. 43, § 11).

The registrar may order satisfaction to be written upon any registered copy of a bill of sale on proof that the debt has been satisfied or discharged (41 & 42 Vict. c. 31, § 15).

(*a*) *Downs* v. *Salmon*, 20 L. R. Q. B. D., 775.

Seizure of Chattels by Holder of Bill of Sale.

The Act of 1882 provides that chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee unless—

1. The grantor make default in payment of the sum or sums of money thereby secured, at the time therein provided for payment, or in the performance of any covenant or agreement in the bill of sale necessary for maintaining the security;

2. Or unless he become bankrupt, or suffer any of the goods to be distrained for rent, rates, or taxes;

3. Or unless he fraudulently remove any of the goods from the premises, or suffer the same to be removed;

4. Or unless he, without reasonable excuse, fail to produce his last receipts for rent, rates, and taxes, to the grantee, upon his demand in writing;

5. Or unless execution shall have been levied against his goods under any judgment at law (§ 7).

Chattels seized are not to be removed from the premises, nor sold, until after the expiration of five clear days from the day of seizure (§ 13); and any grantor whose goods have been seized may, within five days, apply to the High Court, or to a Judge at chambers, who, if satisfied that by payment of money or otherwise the cause of seizure no longer exists, may restrain the grantee from removing or selling the chattels, or may make such other order as may seem just (§ 7).

The provision in § 13 that chattels seized shall remain on the premises for five clear days after seizure is for the benefit of grantors only, and a landlord has no ground of action on it against the grantees if with the consent of the grantor they remove the chattels before the five days have expired (*a*).

(iv.) GUARANTEES AND SURETISHIP.

The Contract of Guarantee.

A guarantee (or guaranty) is a collateral promise or agreement in writing to answer for the payment of some debt, or the performance of some duty, in the event of failure by another person, who is himself, in the first instance, liable to such payment or duty.

Guarantees are regulated by the Statute of Frauds (29 Ch. II. c. 3, § 4), which enacts that "no Action shall be brought to

(*a*) *Tomlinson* v. *Consolidated Credit and Mortgage Corporation*, L. R., 24 Q. B. D., 135.

charge the Defendant upon any special promise to answer for the debt, default, or miscarriage of another person, unless the agreement upon which such Action shall be brought, or some memorandum or note thereof, shall be in writing, signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised."

A verbal guarantee, therefore, cannot be sued upon. But it is only a *collateral promise* to answer for the debt of another person, which needs to be in writing. "If two come to a shop, and one buys, and the other, to gain him credit, promises the seller, 'If he does not pay you, I will,' this is a collateral promise, and requires writing. But if he says, 'Let him have the goods; I will be your paymaster;' or, 'I will see you paid;' this is an undertaking for himself, and no writing is required." (*a*) The question to which of two such persons credit is given is generally one for the jury, on consideration of all the circumstances.

In a recent case, where one person had undertaken verbally to provide funds to meet bills of another person which were then falling due, it was held by the Court of Appeal that the undertaking was an indemnity or promise to be primarily liable, and not a guarantee, and did not come within § 4 of the Statute of Frauds (*b*).

A mere proposal or offer of a guarantee, whether by letter or otherwise, is not a concluded or perfect guarantee unless it be accepted, and the acceptance notified to the maker, and his final assent to it be obtained (*c*).

A guarantee for goods to be supplied will not extend to goods previously supplied, unless it be expressly so stated (*d*).

Continuing Guarantees.

Unless a time be fixed for the duration of the guarantee, it will be deemed a continuing guarantee; as where a Defendant had given the Plaintiff a guarantee for the payment of "any goods he hath or may supply W. P. to the amount of £100," which was held to be not confined to the first £100 worth of goods, but to extend to all future supplies so long as the parties should continue to deal together (*e*). But a guarantor in a simple contract may at any time discharge himself from

(*a*) *Birkmyr* v. *Darnell*, 1 Smith, L. C. (8th ed.) 326.
(*b*) *Guild* v. *Conrad*, W. N. (1894) 126.
(*c*) *M'Iver* v. *Richardson*, 1 M. & S., 557; *Mozeley* v. *Tinkler*, 2 C. M. & R. 692.
(*d*) *Morrell* v. *Cowan*, L. R. 7 Ch. D. 151.
(*e*) *Mason* v. *Pritchard*, 12 East, 227; *Mayer* v. *Isaac*, 6 M. & W. 612.

future and continuing liability by giving notice in writing to the parties (*a*).

Where a firm of bankers had taken a continuing guarantee for advances to a customer in the form of a joint and several bond from two sureties, and after the death of one of the sureties, and after notice thereof, the bank continued to make advances to the customer, it was held that the surviving surety was liable to the bank in respect of such further advances (*b*).

Guarantee given to or in respect of a Firm.

A continuing guarantee given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guarantee was given (53 & 54 Vict. c. 39, § 18).

Contribution among Co-Sureties.

The doctrine of "contribution" amongst sureties is not founded on contract between the parties, but is the result of rules of equity, so that where two or more sureties are bound by different instruments, but for the same principal and the same engagement, they are all liable to contribute (*c*).

And where there are several sureties and one becomes insolvent, the surety who pays the entire debt can compel the solvent sureties to contribute towards payment of the entire debt. So, also, if one of the sureties die, equity can enforce payment against his representatives (*c*).

If a bond be given, and at the same time a mortgage is also made for securing the debt, the bond surety, if he pay the bond, has a right to stand in the place of the mortgagee; and it is immaterial that the surety was not aware of the existing mortgage (*c*).

Discharge of Surety by Act of Creditors.

If the creditor, without the consent of the surety, give further time to the debtor (under a valid agreement with him to that effect), the surety will thereby be discharged, inasmuch as he is thereby deprived of his right upon payment of the debt to have the securities and remedies of the creditor (*d*).

But a mere parol agreement to give time to the debtor

(*a*) *Nottingham Company* v. *Bottrill*, L. R. 8 C. P. 694, 42 L. J., 256.
(*b*) *Beckett* v. *Addyman*, L. R. & Q. B. D., 783.
(*c*) *Dering* v. *Earl of Winchilsea*, 1 White & T. L. C., 106.
(*d*) *Coombe* v. *Woolf*, 8 Bing., 156.

will not afford any defence at law to the surety, where he is bound to the creditor by bond or by an instrument under seal (*a*), it being a well understood principle of law that "parol testimony cannot be received to contradict, vary, add to, or subtract from, the terms of a valid written instrument."

If the person guaranteed do any act injurious to the surety, or inconsistent with the right of the latter, or if he omit to do any act which his duty enjoins him to do and the omission proves injurious to the surety, the surety will be discharged in equity (*b*). Where the Defendant was guarantee upon a bond for advances to be made to a third party, upon the faith that no advances were to be made beyond a certain limit, and advances were made beyond those limits, it was held that the guarantee was discharged (*c*).

Reimbursement of the Surety.

It is a general rule, that in equity a surety is entitled to the benefit of all the securities which the creditor has against the principal, but where a surety gets rid of the obligation at less than the full amount, he will not be allowed, as against his principal, to make himself a creditor for more than he has actually paid (*d*).

The surety who pays off the debt stands in the place of the creditor, and has all the rights and remedies which the latter had to obtain reimbursement. (19 & 20 Vict. c. 97, § 5.)

A surety may take proceedings for the purpose of being indemnified against the debt for which he is liable before he has himself paid any part of it (*e*). But where there are several co-sureties, each is entitled to participate in the benefit of an indemnity taken from the principal debtor by any one of them (*f*).

Assignment of Debts and Choses in Action.

Any debt or other legal chose in action may now be absolutely assigned by the creditor to any third party, but the assignment must be in writing, signed by such creditor: and express notice in writing of the assignment must be given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action. (36 & 37 Vict. c. 66, § 25, sub-sec. 3.)

(*a*) *Davey* v. *Prendergrass*, 5 B. & Ald., 187.
(*b*) Story, Eq. Juris., § 325; *Watts* v. *Shuttleworth*, 29 L. J. Ex., 234.
(*c*) *Gordon* v. *Rae*, 27 L. J. Q. B., 185.
(*d*) *Dering* v. *Earl of Winchilsea*, 1 White & T. L. C., 106.
(*e*) *Nisbet* v. *Smith*, 4 Bro. C. C., 578.
(*f*) *Steel* v. *Dixon*, L. R., 17 Ch. D., 825

SECTION VIII.—BANKRUPTCY.

Bankruptcy proceedings are conducted under an Act of 1883 (46 & 47 Vict. c. 52), as amended by an Act of 1890 (53 & 54 Vict. c. 71). Proceedings *in Court*, in London, are relegated to the High Court of Justice; in the provinces, to the County Court: *administrative* proceedings, both in London and the country, being under the control of the Board of Trade.

Acts of Bankruptcy.

Under the Acts, a Debtor (*a*) commits an act of bankruptcy in each of the following cases (§ 4, Act of 1883; § 1, Act of 1890):—

(*a*) If in England or elsewhere he makes a conveyance or assignment of his property to a Trustee or Trustees for the benefit of his Creditors generally (*b*):

(*b*) If in England or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof (*c*):

(*c*) If in England or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt:

(*d*) If, with intent to defeat or delay his Creditors, he (i) departs out of England, or (ii) being out of England remains out of England, or (iii) departs from his dwelling-house or otherwise absents himself or begins to keep house:

(*e*) If execution against him has been levied by seizure of his goods under process in an action in any court, or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days (*d*): provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the sheriff is ordered to withdraw, or any interpleader issue ordered thereon is finally disposed of, shall not be taken into account in calculating such period of twenty-one days:

(*f*) If he files in court a declaration of inability to pay his debts or presents a bankruptcy petition against himself:

(*g*) If a Creditor has obtained or is entitled to enforce a final

---

(*a*) Ex parte *Blain* v. *Sawers*, L. R., 12 Ch. D., 522; *Crispin* v. *Crispin*, L. R., 8 Ch. App., 374; Ex parte *Pascal*, 1 Ch. D., 509.

(*b*) In re *Wood*, 7 L. R. Ch. App., 302; *Hickman* v. *Cox*, 15 C. B., 617.

(*c*) See *Twyne's Case*, 1 Smith, L. C. (9th ed.), as to fraudulent gifts.

(*d*) That is, twenty-one days *exclusive* of the day of seizure. (In re *North*, ex parte *Hasluck*, C. A. [1895], 2 Q. B., 264.)

Judgment against him for any amount, and execution thereon not having been stayed, has served on him in England, or by leave of the Court, elsewhere, a bankruptcy notice under the Act, requiring him to pay the judgment debt, or to secure or compound for it to the satisfaction of the Creditor or the Court, and he does not—within seven days after service of the notice, in case the service is effected in England, and in case the service is effected elsewhere, then within the time limited by the order giving leave to effect the service—either comply with the requirements of the notice, or satisfy the Court that he has a counterclaim, set-off, or cross-demand which equals or exceeds the amount of the Judgment debt, and which he could not set up in the Action in which the Judgment was obtained:

(*h*) If he gives notice to any of his Creditors that he has suspended, or is about to suspend, payment of his debts (*a*).

Conditions on which Creditors may Petition.

(1) A Creditor or Creditors shall not be entitled to present a bankruptcy petition against a Debtor unless—

(*a*) The debt owing by the Debtor to the petitioning

(*a*) In a case before the Court of Appeal in 1890, where a creditor had sent out a circular in the terms that, "being unable to meet my engagements," he invited the creditors to meet at a certain place where "I will submit a statement of my position for your consideration and decision," it was held by the Court of Appeal (Fry, L.J., diss.), that sending such a circular was an act of bankruptcy. On appeal to the House of Lords this decision was affirmed. (In re *Crook*, ex parte *Crook*, 24 Q. B. D., 320; *Crook* v. *Morley*, H. L. (1891) App. Cas. 316.)

A firm having sent out a circular stating, "Circumstances have placed us in financial difficulties, which make it desirable for us to consult with our creditors. . . . We are having our books examined, and a statement prepared by Messrs. F., chartered accountants, and as soon as this is complete, we propose inviting you to a meeting of our creditors," it was held (by Vaughan Williams, J.) that this was an act of bankruptcy. (In re *Simonson*, ex parte *Ball*, [1894] 1 Q. B. 433.)

In another case the solicitor of the debtor had sent out the following notice: "I have been consulted by Mr. ——, and I find that his affairs are in so complicated a stage that it is only right that his creditors should be called together to decide if the serious step (to them) of bankruptcy can be avoided. I therefore request your attendance at a meeting . . . , when a statement of affairs will be submitted." The registrar held that this was not an act of bankruptcy, but upon appeal to a Divisional Court (Williams and Wright, JJ.) the decision was reversed. Mr. Justice Vaughan Williams said "he did not wish to say it was impossible so to word a notice as to prevent its being an act of bankruptcy; but when a man called in an accountant or solicitor to look into his affairs, and to send a notice to his creditors, it required very little to make it a notice of intention to suspend payment." (In re *Waite*, [1895] L. T. 184.)

Creditor, or, if two or more Creditors join in the petition, the aggregate of the debts owing to the several petitioning Creditors, amounts to £50, and

(*b*) The debt is a liquidated sum, that is a sum which can be actually arrived at, and is payable either immediately or at some certain future time, and

(*c*) The act of bankruptcy on which the petition is grounded has occurred within 3 months before the presentation of the petition, and

(*d*) The Debtor is domiciled in England, or, within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in England.

(2) If the petitioning Creditor is a secured Creditor, he must, in his petition, either state that he is willing to give up his security for the benefit of the Creditors in the event of the Debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case he may be admitted as a petitioning Creditor to the extent of the balance of the debt due to him, after deducting the value so estimated, in the same manner as if he were an unsecured Creditor (§ 6, Act of 1883).

Debtor's Petition.

A Debtor's petition must allege that he is unable to pay his debts, and the presentation of such a petition shall be deemed an act of bankruptcy without a declaration of the Debtor's inability to pay his debts having been filed (§ 8).

Receiving Order.

Upon the presentation of a petition either by or against a Debtor, the Court may make what is called in the Act a receiving order for the protection of the estate (§ 5). This is an extremely useful provision. It has the effect of suspending the remedies of Creditors against the person and property of the Debtor pending the hearing of and adjudication upon the petition, and meantime his estate is managed by the Official Receiver who is appointed for that purpose by the order (§ 9). It also affords time for the Creditors to investigate the Debtor's affairs with the view of avoiding bankruptcy by the acceptance of a composition. As a matter of fact it usually happens that the Debtor files his petition in consequence of his being pressed by a Creditor, and this provision of the Act, coupled with those of § 10 as to staying proceedings by order of the Court, which should be read with § 9, should suffice to prevent one Creditor obtaining advantage over another.

The service of an order to stay proceedings under § 10 can be effected by sending a sealed copy by post, prepaid.

The Official Receiver, when in control of the Debtor's estate, may, on the application of a Creditor, appoint a special manager to conduct the Debtor's business. The security to be given by a special manager is fixed by the Board of Trade, but his remuneration by the Creditors in ordinary meeting (§ 12).

Proceedings consequent on Receiving Order.

As soon as may be after the making of a receiving order against a Debtor, a general meeting of his Creditors shall be held to consider whether a proposal for a composition or scheme of arrangement shall be entertained, or whether the Debtor should be adjudged bankrupt, and generally as to the mode of dealing with the Debtor's property. The meeting is to be held within 14 days from the date of the receiving order. (§ 15.)

Debtor's Statement of Affairs.

Where a receiving order is made against a Debtor, he shall make out and submit to the Official Receiver a statement of his affairs, verified by affidavit, and showing the particulars of his assets, debts, and liabilities, the names, residences, and occupations of his Creditors, the securities held by them, the dates when given, and such further information as the Official Receiver may require.

The statement shall be so submitted (1) if the order is made on the petition of the Debtor, within 3 days from the date of the order; (2) if on the petition of the Creditor, within 7 days from the date of the order. But the Court may in either case, for special reasons, extend the time.

If the Debtor fails without reasonable excuse to comply with these requirements, the Court may, on the application of the Official Receiver, or of any Creditor, adjudge him bankrupt.

A Creditor or his agent duly authorised may inspect the statement so filed and take copies of or extracts therefrom (§ 116).

Public Examination of Debtor.

Where the Court makes a receiving order it shall hold a public sitting on a day to be appointed by the Court for the examination of the Debtor, who shall attend thereat and be examined, upon oath, as to his conduct, dealings, and property (*a*).

(*a*) *Ex parte Schofield*, 6 L. R. Ch. D., 230.

Any Creditor who has tendered a proof, or his representative authorised in writing, may question the Debtor concerning his affairs and the causes of his failure.

Notes of the examination shall be taken, and shall be read over either to or by the Debtor and signed by him, and may thereafter be used in evidence against him. They shall also be open to the inspection of any Creditor at all reasonable times.

Where the Debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, the Court may make an order dispensing with such examination, or directing that the Debtor be examined on such terms, in such manner, and at such place, as to the Court seems expedient.

No public examination shall close until after the day appointed for the first meeting of Creditors (§ 17, Act of 1883; § 2, Act of 1890).

Composition and Schemes of Arrangement.

(1) Where a Debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs, or within such time thereafter as the Official Receiver may fix, lodge with the Official Receiver a proposal in writing, signed by him, embodying the terms of the proposed composition or scheme, and setting out particulars of any sureties or securities proposed.

(2) In such case the Official Receiver shall hold a meeting of Creditors before the public examination of the Debtor is concluded, and send to each Creditor, before the meeting, a copy of the Debtor's proposal with a report thereon; and if at that meeting a majority in number and three-fourths in value of all the Creditors who have proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the Creditors, and when approved by the Court shall be binding on all the Creditors.

(3) The Debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the Official Receiver, calculated to benefit the general body of Creditors.

(4) Any Creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form addressed to the Official Receiver so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the Creditor had been present and had voted at the meeting.

(5) The Debtor or the Official Receiver may, after the pro-

posal is accepted by the Creditors, apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each Creditor who has proved.

(6) The application shall not be heard until after the conclusion of the public examination of the Debtor. Any Creditor who has proved may be heard by the Court in opposition to the application, notwithstanding that he may at a meeting of Creditors have voted for the acceptance of the proposal.

(7) The Court shall, before approving the proposal, hear a report of the Official Receiver as to the terms thereof, and as to the conduct of the Debtor, and any objections which may be made by or on behalf of any Creditor.

(8) If the Court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of Creditors, or in any case in which the Court is required where the Debtor is adjudged bankrupt to refuse his discharge, the Court shall refuse to approve the proposal.

(9) If any facts are proved on proof of which the Court would be required either to refuse, suspend, or attach conditions to the Debtor's discharge were he adjudged bankrupt, the Court shall refuse to approve the proposal, unless it provides reasonable security for payment of not less than seven shillings and sixpence in the pound on all the unsecured debts provable against the Debtor's estate.

(10) In any other case the Court may either approve or refuse to approve the proposal.

(11) If the Court approves the proposal, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the Court.

(12) A composition or scheme so accepted and approved shall be binding on all the Creditors so far as relates to any debts due to them from the Debtor and provable in bankruptcy, but shall not release the Debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders.

(13) A certificate of the Official Receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.

(14) The provisions of a composition or scheme under this section may be enforced by the Court on application by any person interested.

(15) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the Creditors or to the Debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by the Official Receiver or the Trustee, or by any Creditor, adjudge the Debtor bankrupt, and annul the composition or scheme.

(16) If under or in pursuance of a composition or scheme a Trustee is appointed to administer the Debtor's property or manage his business, or to distribute the composition, the provisions of the Act of 1883 relating to discovery of the Debtor's property (§ 27) and to Trustees shall apply as if the Trustee were a Trustee in a bankruptcy.

(17) The provisions of the Act of 1883 as to proof of debt and realising of property shall also apply.

(18) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

(19) The acceptance by a Creditor of a composition or scheme shall not release any person who under the Acts would not be released by an order of discharge if the Debtor had been adjudged bankrupt (§ 3, Act of 1890).

Adjudication of Bankruptcy.

Where a receiving order is made against a Debtor, then if the Creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the Debtor be adjudged bankrupt, or pass no resolution, or if Creditors do not meet, or if a composition or scheme is not accepted or approved within 14 days after the conclusion of the examination of the Debtor, the Court shall adjudge the Debtor bankrupt, and thereupon the property of the Bankrupt shall become divisible among his Creditors and shall vest in a Trustee (§ 20, Act of 1883).

Gazette Notice of Bankruptcy, &c.

Notice of every receiving order and of every order adjudging a Debtor bankrupt, is to be gazetted and advertised in a local paper (§§ 13, 20).

Appointment of Trustee.

Where a Debtor is adjudged bankrupt, or the Creditors have resolved that he be so adjudged, the Creditors may, by ordinary

resolution, appoint some fit person, whether a Creditor or not, to fill the office of Trustee of the property of the bankrupt, or they may resolve to leave his appointment to the Committee of Inspection.

The person so appointed shall give security to the satisfaction of the Board of Trade, and the Board, if satisfied with the security, shall certify that his appointment has been duly made, unless they object to the appointment on the ground that it has not been made in good faith by a majority in value of the Creditors voting, or that the person appointed is not fit to act as Trustee, or that his connection with or relation to the Bankrupt, or his estate, or any particular Creditor, makes it difficult for him to act with impartiality in the interests of the Creditors generally.

When the Board of Trade take any such objection, they shall, if so requested by a majority in value of the Creditors, notify the objection to the High Court, and the High Court may decide on its validity (*a*).

The appointment of Trustee takes effect from the date of the certificate of his appointment.

An Official Receiver shall not, except as provided by the Act (see § 54), be the Trustee of the Bankrupt's property.

In default of the appointment by the Creditors of a Trustee within four weeks after the day of adjudication, or if a scheme or composition be in progress at the expiration of the four weeks, then within seven days from the close of the negotiations, the Official Receiver shall report the matter to the Board of Trade, who shall appoint a Trustee, and shall certify the appointment. A Trustee so appointed may at any subsequent time be replaced by a Trustee to be appointed by the Creditors.

It is the duty of the Official Receiver, immediately after the adjudication, to convene a meeting to appoint a Trustee (§ 21).

Committee of Inspection.

The Creditors, qualified to vote, may at their first or any subsequent meeting, by resolution (*b*), appoint from among the

(*a*) The object being that the Trustee should be absolutely impartial, objection may be taken to a proposed Trustee without "anything definite" being urged against him. Thus, where the Trustee-elect was in every respect a suitable person, and was unanimously supported by the creditors, but his professional connection with the bankrupt's estate made it possible that he might be an accounting party, the Board of Trade vetoed the appointment, and the Court declared itself unable to interfere (*In re Mardon*, 65 L. J. R. Q. B. 111).

(*b*) This means an ordinary resolution passed by the majority of the creditors present in person or by proxy at a meeting and voting on the resolution (§ 168).

Creditors, or the holders of general proxies or general powers of attorney from such Creditors, a Committee of Inspection for the purpose of superintending the administration of the Bankrupt's property by the Trustee. Such Committee shall consist of not more than five or less than three persons.

If a member of the Committee becomes bankrupt or compounds with his Creditors, or is absent from five consecutive meetings, his office shall become vacant. Any member of the Committee may be removed by an ordinary resolution at any meeting of Creditors of which seven days' notice has been given stating the object of the meeting.

On a vacancy occurring the Trustee shall forthwith summon a meeting of Creditors, who may by resolution appoint another person eligible as above to fill the vacancy.

Vacancies may be filled up by the Committee as they occur, and two continuing members of a Committee may act.

The functions of the Committee of Inspection are performed by the Board of Trade where no such Committee has been appointed by the Creditors (§ 22, Act of 1883; § 5, Act of 1890).

Trustee to Furnish List of Creditors.

The Trustee or Official Receiver shall, whenever required by a Creditor, furnish and transmit to such Creditor by post, a list of the Creditors with the amounts of their debts, and shall be entitled to charge for such list 3d. per folio of 72 words, besides postage (§ 16, Act of 1890).

Statements of Accounts.—Meetings.

Any Creditor, with the concurrence of one-sixth of the Creditors (including himself), may at any time call upon the Trustee or Official Receiver to transmit to the Creditors a statement of accounts up to date; and may also request that a meeting of Creditors may be called, in which case such meeting shall be called within 14 days: but the person at whose instance the accounts are furnished, or such meeting called, shall deposit a sum sufficient to pay the costs of furnishing the accounts or calling the meeting, such sum to be repaid to him out of the estate if the Creditors or the Court so direct (§§ 17, 18, Act of 1890).

Power to accept Composition or Scheme after Adjudication.

Where a Debtor is adjudged bankrupt, the Creditors may, if they think fit, at any time after the adjudication, resolve to

entertain a proposal for a composition or scheme of arrangement of the Bankrupt's affairs; and thereupon the same proceedings shall be taken and the same consequences ensue as in the case of a composition or scheme accepted before adjudication, and the Debtor's property may be revested in him or in any other person by order of the Court on such terms and conditions as the Court may declare (§ 23, Act of 1883; § 6, Act of 1890).

Control over Person and Property of Debtor.

Every Debtor against whom a receiving order is made shall attend the first meeting of his Creditors, and submit to such examination and give such information as the meeting may require: he shall also give an inventory of his property, a list of his Creditors and Debtors, and the debts due to and from them, and attend such other meetings of his Creditors, wait on the Official Receiver, Manager, or Trustee, execute such powers of attorney, deeds, and instruments, and generally do all such acts and things in relation to his property and its distribution as may be reasonably required or directed, or which he may be directed to do by the Court or under any order or orders made under this Act. Every Debtor is also bound to assist in the realisation of his property, and if he shall wilfully fail to perform the duties imposed on him by this section or to deliver up any of his property he will be guilty of contempt of Court, in addition to any other punishment to which he may be liable under the Act (§ 24, Act of 1883).

Arrest of Debtor under certain Circumstances.

The Court may, by warrant, cause a Debtor to be arrested, and any books, papers, money, and goods in his possession to be seized, under the following circumstances: (1) if after a bankruptcy notice had been issued, and served upon him, or after presentation of a bankruptcy petition by or against him, there is probable reason for believing that he has absconded, or is about to abscond, with a view of avoiding, delaying, or embarrassing proceedings in bankruptcy against him; (2) if he is about to remove his goods, or to conceal or destroy them, or any books, documents, or writings which might be of use to the Creditors; (3) if he removes any goods in his possession above the value of £5 without the leave of the Official Receiver or Trustee; or (4) if he fails to attend any examination ordered by the Court (§ 25, Act of 1883; § 7, Act of 1890).

Re-direction of Debtor's Letters.

Where a receiving order is made against a Debtor, the Court, on the application of the Official Receiver or Trustee, may from time to time order that for such time, not exceeding 3 months, as the Court thinks fit, post-letters addressed to the Debtor at any place be re-directed and sent to the Official Receiver, or the Trustee, or otherwise as the Court directs (§ 26, Act of 1883).

Discovery of Debtor's Property.

The Court may, on the application of the Official Receiver or Trustee, at any time after a receiving order has been made against a Debtor, summon before it the Debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the Debtor, or supposed to be indebted to the Debtor, or any person whom the Court may deem capable of giving information respecting the Debtor, his dealings or property, and to produce any documents relating thereto. Failing compliance with the summons any such person may be apprehended and brought up for examination. The Court has power to examine any person on oath, both orally or by written interrogatories, and if upon examination any such person admits that he is indebted to the Debtor, the Court may order payment of the amount found to be due from him to the Official Receiver or the Trustee, or such other amount in discharge thereof as the Court think fit, and with or without costs of examination. The Court has also similar power to order any such person to hand over to the Official Receiver or Trustee any property in his hands belonging to the Debtor upon such terms as it thinks fit (§ 27).

Discharge of Bankrupt.

(1) A Bankrupt may, at any time after being adjudged bankrupt, apply for an order of discharge, and the Court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the Bankrupt is concluded. The application shall be heard in open Court.

(2) On the hearing of the application the Court shall take into consideration a report of the Official Receiver as to the Bankrupt's conduct and affairs (including a report as to the Bankrupt's conduct during the proceedings under his bankruptcy), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with

respect to any earnings or income which may afterwards become due to the Bankrupt, or with respect to his after-acquired property : Provided that the Court shall refuse the discharge in all cases where the Bankrupt has committed any misdemeanor under the Debtors Act, 1869, or the Act of 1883, or any other misdemeanor connected with his bankruptcy, or any felony connected with his bankruptcy, unless for special reasons the Court otherwise determines, and shall, on proof of any of the facts herein-after mentioned, either—

(i) Refuse the discharge; or

(ii) Suspend the discharge for a period of not less than two years ; or

(iii) Suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the Creditors ; or

(iv) Require the Bankrupt as a condition of his discharge to consent to judgment being entered against him for any unsatisfied balance of the debts provable under the bankruptcy, such balance to be paid out of his future earnings or after-acquired property, but execution shall not be issued on the judgment without leave of the Court.

If at any time after two years from the date of any order made under this section the Bankrupt shall satisfy the Court that there is no reasonable probability of his being in a position to comply with such order, the Court may modify its terms.

(3) The facts herein-before referred to are :—

(*a*) That the Bankrupt's assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities, unless he satisfies the Court that this fact has arisen from circumstances for which he cannot justly be held responsible :

(*b*) That the Bankrupt has omitted to keep usual and proper books of account within the three years immediately preceding his bankruptcy :

(*c*) That the Bankrupt has continued to trade after knowing himself to be insolvent :

(*d*) That the Bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it :

(*e*) That the Bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities :

(*f*) That the Bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs :

(*g*) That the Bankrupt has put any of his Creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him :

(*h*) That the Bankrupt has within three months preceding the date of the receiving order incurred unjustifiable expense by bringing a frivolous or vexatious action :

(*i*) That the Bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors :

(*j*) That the Bankrupt has within three months preceding the date of the receiving order incurred liabilities with a view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities.

(*k*) That the Bankrupt has on any previous occasion been adjudged bankrupt, or made a composition or arrangement with his Creditors :

(*l*) That the Bankrupt has been guilty of any fraud or fraudulent breach of trust.

(4) For the purposes of this section a Bankrupt's assets shall be deemed of a value equal to ten shillings in the pound when the Court is satisfied that the property of the Bankrupt has realised, or is likely to realise, or with due care in realisation might have realised, an amount equal to ten shillings in the pound on his unsecured liabilities, and a report by the Official Receiver or the Trustee shall be *primâ facie* evidence of the amount of such liabilities.

(5) For the purposes of this section the report of the Official Receiver shall be *primâ facie* evidence of the statements therein contained.

(6) Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each Creditor who has proved, and the Court may hear the Official Receiver and the Trustee, and may also hear any Creditor.

(7) The powers of suspending and of attaching conditions to a Bankrupt's discharge may be exercised concurrently.

(8) A discharged Bankrupt shall, notwithstanding his dis-

charge, give such assistance as the Trustee may require in the realisation and distribution of his property, and if he fails to do so he shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge. (§ 8, Act of 1890.)

Where Settlement made by Debtor.

Where a Bankrupt (1) has made a settlement in consideration of marriage, and is at the time unable to pay all his debts without the aid of property comprised in the settlement; or (2) has covenanted or contracted in consideration of marriage for the future settlement on his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest; and it appears to the Court that such settlement, covenant, or contract was made to delay or defeat Creditors, or was unjustifiable having regard to the Bankrupt's affairs at the time, the Court may refuse or suspend his order of discharge, or grant an order subject to conditions, or it may refuse to approve a composition or arrangement in like manner as where the Debtor has been guilty of fraud (§ 29, Act of 1883).

(This section only applies to *ante*-nuptial settlements: see *post*, p. 235, in regard to *post*-nuptial settlements.)

Effect of Discharge.

An order of discharge does not release the Debtor from a recognisance; nor from any Crown debt, unless the Treasury shall consent in writing to his discharge therefrom; nor from any debt contracted by fraud or fraudulent breach of trust; nor from any liability under a judgment in an action for seduction, or an affiliation order, or a judgment against him as co-respondent in a matrimonial cause, except so far as the Court may order; and the discharge does not release a partner or surety of the Debtor (§ 30, Act of 1883; § 10, Act of 1890).

Restriction on Undischarged Bankrupt.

An undischarged Bankrupt obtaining credit to the extent of £20 or upwards from any person without informing such person that he is an undischarged bankrupt will be guilty of a misdemeanor, punishable under the Debtors Act, 1869 (§ 31, Act of 1883). And it will be immaterial that there was no intent to defraud in so obtaining credit (*a*).

Disqualifications of Bankrupt.

(1) Where a Debtor is adjudged bankrupt he shall, subject to the provisions of this Act, be disqualified for—

(*a*) *Reg.* v. *Dyson*, C. C. R. (1894) 2 Q. B., 176.

(*a*) Sitting or voting in the House of Lords, or on any committee thereof, or being elected as a peer of Scotland or Ireland to sit and vote in the House of Lords:
(*b*) Being elected to, or sitting or voting in, the House of Commons, or any committee thereof:
(*c*) Being appointed to or acting as a Justice of the Peace:
(*d*) Being elected to or holding or exercising the office of Mayor, Alderman, or Councillor:
(*e*) Being elected to or holding or exercising the office of Guardian of the Poor, Overseer of the Poor, Member of Sanitary Authority, or Member of School Board, Highway Board, Burial Board, or Select Vestry.
(*f*) Being elected to, or holding or exercising, the office of a Member of County Council.

(2) The disqualifications to which a Bankrupt is subject under this section shall be removed and cease if and when the adjudication of bankruptcy against him is annulled; or he obtains from the Court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part; and no such disqualification shall exceed a period of five years from the date of any discharge granted to the Bankrupt.

The Court may grant or withhold such certificate as it thinks fit, but any refusal thereof shall be subject to appeal.

(3) The disqualifications extend to all parts of the United Kingdom (§ 32, Act of 1883; § 9, Act of 1890).

If a member of the House of Commons be adjudged bankrupt, and the disqualifications under this Act be not removed within 6 months, the Court shall immediately after the expiration of that time notify the same to the Speaker, and thereupon the seat of such member becomes vacant, and a writ to fill the vacancy is to be issued (§ 33, Act of 1883); and upon any person holding any of the offices mentioned in sub-sects. (*d*) and (*e*) of § 32 being adjudged bankrupt, his office thereby becomes vacant (§ 34).

Proof of Debts.

All debts and liabilities, present or future, certain or contingent, to which a Debtor is subject at the date of the receiving order (except demands in the nature of unliquidated damages arising otherwise than by contract, promise, or breach of trust), are provable in Bankruptcy, and the Trustee, or (in case of appeal) the Court, may settle the amount at which a contingent and uncertain debt may be admitted to proof (§ 37).

Bonâ fide set-offs shall be allowed to or against any Creditor

unless at the time of giving credit for which a set-off is claimed he had notice of an act of bankruptcy available against the Debtor (§ 38).

Debts carrying Interest.

Where a debt has been proved upon a Debtor's estate under the principal Act, and such debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding five per centum per annum, without prejudice to the right of a Creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts have been paid in full (§ 23, Act of 1890).

Priority of Debts.

By the Preferential Payments in Bankruptcy Act, 1888 (*a*), the following enactments as to priority of debts are substituted for those of § 40, sub-sects. 1 & 2, of the Act of 1883 (*b*) :—

In the distribution of the property of a Bankrupt, or of a deceased person dying insolvent, there shall be paid in priority to all other debts (subject to costs of administration, or of funeral or testamentary expenses) :—

(*a*) All local rates due at the date of the receiving order, and payable within 12 months next before such date, and all assessed taxes, land tax, property or income tax assessed on him up to the 5th April next before the said date, and not exceeding in the whole one year's assessment.

(*b*) All wages or salary of any clerk or servant in respect of services rendered to the Bankrupt during the 4 months previous to the receiving order, not exceeding £50.

(*c*) All wages of any labourer or workman not exceeding £25, whether for time or piece work, in respect of services rendered during the 2 months previous to the receiving order.

These debts are to rank equally and be paid in full unless the property of the Bankrupt is insufficient, in which case they shall abate in equal proportions; and in case of a distraint upon the effects of the Bankrupt within 3 months before a receiving order, they shall be a first charge on the goods distrained and the proceeds thereof. (51 & 52 Vict. c. 62, §§ 1, 2.)

In the case of partners the joint estate shall be applicable in

(*a*) 51 & 52 Vict. c. 62.

(*b*) The Preferential Payments Act of 1888 did not apply to Ireland, but by the Preferential Payments in Bankruptcy (Ireland) Act, 1889 (52 & 53 Vict. c. 60), substantially the same provisions as those of the Act of 1888 were applied to Ireland. By the same Act of 1889 those provisions were applied also to the winding up of companies, as in England.

the first instance in payment of their joint debts. The separate estate of each partner shall be applied in payment of his separate debts, and any surplus shall be dealt with as part of the joint estate. (46 & 47 Vict. c. 52, § 40.)

Other debts proved shall be paid *pari passu* (§ 40).

Friendly Societies are made preferential Creditors in respect of moneys in the hands of their officers at the time of their becoming bankrupt. (46 & 47 Vict. c. 52, § 40; and see 38 & 39 Vict. c. 60, § 15, and 51 & 52 Vict. c. 62, § 2.)

The indentures or articles of an apprentice or articled clerk may be discharged by bankruptcy, and the Trustee may (subject to an appeal to the Court) return any portion of the fee paid with such apprentice or clerk, or he may, on the application of the apprentice or articled clerk, transfer the indentures or articles to some other person. (46 & 47 Vict. c. 52, § 41.)

The Landlord is empowered to distrain for rent due from the Bankrupt, either before or after the commencement of the bankruptcy; but if levied after, then only for *six months'* rent (*a*) accrued due prior to the date of the order of adjudication. He may prove under the bankruptcy for the surplus (46 & 47 Vict. c. 52, § 42; 53 & 54 Vict. c. 71, § 28).

Property available for Payment of Debts.

A bankruptcy shall be deemed to have commenced at the time of the act of bankruptcy upon which the receiving order is made, and the title of the Trustee to the property of the Debtor relates back to the act of bankruptcy (§ 43, Act of 1883).

All property of the Debtor shall be applicable for division amongst the Creditors, except—

1. Property held by the Bankrupt in trust for another.

2. The Debtor's tools of trade or wearing apparel of himself, his wife, and family, and bedding, to an inclusive value not exceeding £20 (§ 44).

But although the Trustee may sell the Bankrupt's advowson, the right of nomination to an ecclesiastical benefice does not pass to him (*b*).

When Debtor's Goods taken in Execution.

(1) Where any goods of a Debtor are taken in execution, and before the sale thereof, or the completion of the execution, notice is served on the Sheriff that a receiving order has been made against the Debtor, the Sheriff shall, on request, deliver the goods and any money seized or received in part satisfac-

(*a*) It was twelve months' under the Act of 1883; but now six months' under the Act of 1890. (*b*) *Ulston* v. *Athery*, 7 A. & E., 289.

tion of the execution to the Official Receiver, but the costs of the execution shall be a first charge on the goods or money.

(2) Where under an execution in respect of a judgment for a sum exceeding twenty pounds, the goods of a Debtor are sold or money is paid in order to avoid sale, the Sheriff shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition against or by the Debtor, or a receiving order is made against the Debtor, the Sheriff shall pay the balance to the Official Receiver or Trustee, who shall be entitled to retain the same as against the execution Creditor (§ 11, Act of 1890).

When Settlements of Property Void.

A voluntary settlement (other than an *ante*-nuptial settlement or one made in favour of a purchaser or incumbrancer in good faith or in respect of property acquired in right of a wife which is settled on such wife and children) shall be absolutely void against the Trustee in case of bankruptcy within 2 years from the date of the settlement, or within 10 years of the date of settlement, unless it can be proved that the settlor was able at the time of making the settlement to pay all his debts without the aid of the property comprised in the settlement (§ 47, Act of 1883).

A person cannot covenant or contract to settle future acquired property on his wife or children in consideration of marriage, and any such covenant or contract is void as against a Trustee in bankruptcy (§ 47).

Every conveyance or transfer of property or payment of money or obligation incurred with the view of giving one Creditor preference over another is void as against a Trustee in bankruptcy in case bankruptcy ensues within 3 months after any such conveyance, &c., but these provisions shall not affect any person making a title *bonâ fide* for valuable consideration through or under a Creditor of the Debtor (§ 48) (*a*).

Bonâ fide transactions by the Debtor with any person not

(*a*) In a case where a bankrupt, two days before his bankruptcy, had executed a deed, by which he conveyed an estate to a person upon trust to raise thereout certain moneys, and therewith to make good breaches of trust which he (the bankrupt) had committed in respect of certain scheduled trust estates of which he was trustee, but without communicating the deed to any of the beneficiaries of the scheduled trust estates, it was held by the Court of Appeal that the deed was not a fraudulent preference within the meaning of this section, because the object of the bankrupt in executing it was not to prefer some creditors to others, but to shield himself from the consequences of his breach of trust (*New, Prance & Garrard's Trustee* v. *Hunting*, C. A. [1897] 2 Q. B. 19).

having notice of any available act of bankruptcy shall not be invalidated by reason of bankruptcy (§ 49).

Realisation of Property.

A Trustee, immediately he is appointed, may take possession of all the property, deeds, books, and documents of the Debtor, breaking open any house, building, or room for that purpose under the authority of a search-warrant, and may transfer the property and shares of the Debtor in as full and ample a manner as the Debtor might if no bankruptcy had occurred. A banker or other person holding property or securities belonging to the Debtor must hand the same over to the Trustee or be guilty of contempt of Court (§§ 50, 51).

Where a beneficed clergyman becomes bankrupt the Trustee may apply for sequestration of the benefice, and after paying to such clergyman an allowance during the time he carries out the duties of his benefice, to be fixed by the Bishop of the diocese, the balance arising from the living goes to the Trustee for the benefit of the Creditors (§ 52).

A portion of the salary, half-pay, or pension of an officer of the Army, Navy, or Civil Service, becoming bankrupt (to be fixed by the Court, with the authority of the chief of the department to which he belongs), may be ordered to be paid to the Trustee for the benefit of the Creditors (§ 53).

The Trustee may himself realise the property of the Debtor (§ 56, Act of 1883), and with permission of the Committee of Inspection may carry on the business of a Bankrupt, take or defend proceedings, employ solicitors and agents, mortgage or pledge any part of the estate, refer disputes to arbitration, compromise with Creditors in respect of any debts provable in bankruptcy, or with other persons in respect of any claims against the estate, and divide amongst Creditors property which cannot be advantageously realised (§ 57).

A Bankrupt may be appointed to manage the property of the bankruptcy, and be paid an allowance or remuneration, but the Committee of Inspection must concur in the appointment (§ 64); and he will be entitled to any surplus of the estate after payment in full of Creditors, with interest at £4 per cent., and all costs and charges of the bankruptcy (§ 65).

Disclaimer of Property.

The Trustee may within 12 months (or longer if the period be extended by the Court) from date of his appointment or his becoming aware of the property, disclaim all onerous property of the Bankrupt—such as property which is unsaleable, or

burdened with onerous covenants, stocks and shares of companies, and unprofitable contracts—subject to the control of the Court in certain cases. Any person injured by a disclaimer may be admitted as a Creditor and prove for the extent of his injury (§ 55, Act of 1883 ; § 13, Act of 1890).

Payment of Dividends.

Dividends are to be distributed amongst the Creditors with all convenient speed, and unless satisfactory cause be shown, the first dividend shall be declared within 4 months of the first meeting of Creditors, and subsequent dividends at intervals of not more than 6 months. Notice of the dividend is to be gazetted before it is paid, and special notice is to be given thereof to all Creditors who have not proved, and upon the declaration of the dividend notices to be sent to each Creditor who has proved showing how, when, and where it is payable. Where one partner of a firm becomes bankrupt his firm debts are not to rank for dividend until all his separate debts are satisfied, but where joint and separate estates are being administered by the same Trustee the dividends thereof shall be declared together and the expenses thereof are to be apportioned (§§ 58, 59).

A Creditor, although he may not have proved before the declaration of a dividend, will, after proof, be entitled to be paid all dividends theretofore declared out of any means which may be in the hands of the Trustee (§ 61). But as soon as the Trustee has in the opinion of himself and the Committee of Inspection realised all the property of the Bankrupt, or so much thereof as is capable of realisation, he shall, after giving notice to all persons whose claims have been notified to him, but who have not proved and shall not after such notice prove, proceed to declare a final dividend without regard to such claims (§ 62). No Action lies against a Trustee for a dividend, but the Court may order him to pay over any dividend he has withheld with interest, and mulct him in costs (§ 63).

Forfeiture of Lease on Bankruptcy of Lessee.

A change in the law on this subject has been made by the Conveyancing and Law of Property Act, 1892 (55 & 56 Vict. c. 13), which amended the Conveyancing Act of 1881. That Act (sub-section 6, § 14) provided, in effect, that there was no relief to a lessee from a proviso in his lease that the lease should be forfeited on his bankruptcy.

But it is now provided (55 & 56 Vict. c. 13, § 2) that sub-

section 6 of § 14 of the Act of 1881 is to apply to a condition for forfeiture on bankruptcy of the lessee, or on taking in execution of the lessee's interest, "only after the expiration of one year from the date of the bankruptcy or taking in execution, and provided the lessee's interest be not sold within such one year," but in case the lessee's interest be sold within such one year, sub-section 6 is to cease to be applicable thereto.

This new provision, however, is not to apply to any lease of (*a*) agricultural or pastoral land; (*b*) mines or minerals; (*c*) a house used or intended to be used as a public-house or beer-shop; (*d*) a house let as a dwelling-house, with the use of any furniture, books, works of art, or other chattels not being in the nature of fixtures; (*e*) any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor, or to any person holding under him (§ 3). In the case of all such leases as are here mentioned, therefore, a proviso in the lease of forfeiture in case of bankruptcy will still have absolute effect.

Remuneration of Trustee.

Where the Trustee is appointed by the Creditors, his remuneration shall be in the nature of a commission or percentage, to be fixed by resolution of Creditors or the Committee of Inspection on the amount realised by him. But where he acts without remuneration, the Trustee shall be allowed such proper expenses as the Creditors with the sanction of the Board of Trade may approve. All bills and charges of professional persons employed by the Trustee are to be taxed by the proper officer of the Court (§§ 72, 73, Bankruptcy Act of 1883; § 15, Act of 1890).

Receipts, Payments, and Accounts of Trustee.

An account called the "Bankruptcy Estates Account" is to be kept by the Board of Trade with the Bank of England, and every Trustee is to pay the money received by him to this account at the Bank of England. But the Board of Trade may authorise a Trustee, on the application of a Committee of Inspection, to have an account with a local bank.

If a Trustee at any time retains for more than 10 days a sum exceeding £50, or such other amount as the Board of Trade in any particular case may authorise him to retain, he will be liable to pay interest thereon at 20 per cent. per

annum, and shall have no claim for remuneration, and may be removed from his office. He must not pay any sums received by him as Trustee into his own private banking account (§§ 74, 75, Act of 1883).

A Trustee must furnish to any Creditor upon request and payment of the proper fee a list of Creditors showing the sum due to each (§ 79).

He must also keep books in the prescribed form and record therein all proceedings at meetings connected with the bankruptcy, and these are open to the inspection of any Creditor, subject to the control of the Court (§ 80).

Allowances to Brokers, Auctioneers, and Accountants.

The following charges (it is directed by the Order, made under the Bankruptcy Acts, 1883 and 1890, sanctioning this scale) are to be subject to *reduction* by agreement with the Official Receiver or the Trustee in Bankruptcy; or to *increase* with the sanction of the Committee of Inspection and the Official Receiver:—

1.—*Broker's Allowances.*

For inventory, only, of chattel property and one copy (not exceeding 5 folios)	£0	10	6
For every additional folio beyond 5 up to 20, and one copy	0	1	6
For each folio above 20, and one copy	0	1	0

For inventory and valuation of chattel property:—

On the first £100	£2	10	0	per cent.
On the next £400	1	5	0	,,
Above up to £10,000	1	0	0	,,
Above £10,000	0	10	0	,,

In addition, the broker shall be entitled to railway fare or cab hire actually paid, if the distance exceeds one mile, and when beyond five miles the amount shall be in the discretion of the Taxing Officer, and shall not exceed the actual expense of travelling.

When an order has been made for summary administration, three-fifths only of the per-centages for inventory and valuation shall in the absence of special agreement be allowed.

2.—*Auctioneer's Charges.*

For sales by private contract based on the valuation, half the above charges for inventory and valuation.

For sales by auction, in addition to such out-of-pocket expenses as may be authorised at the time by the Official Receiver or Trustee:—

Of chattel property not exceeding:—

On the first £500	£5	0	0	per cent.
Above up to £1,000	4	0	0	,,
Above £1,000	2	10	0	,,

Of estates, freehold, leasehold, &c., including prior valuations, for determining amount of reserve bids:—

On the first £300	£5	0	0	per cent.
On the next £1,600	2	10	0	,,
Above up to £5,000	1	5	0	,,
Above £5,000	1	0	0	,,

No higher allowance to be sanctioned without leave of Board of Trade.

Costs of surveys, dilapidations, and specifications in discretion of Taxing Officer	2	0	0	to	5	0	0

3.—*Accountant's Charges.*

Where the employment of an accountant has been duly sanctioned, and in the absence of any special arrangement with the Official Receiver or the Trustee for a smaller amount, the following charges may be allowed:—

For preparing balance-sheet, investigating accounts, &c., principal's time, exclusively so employed, per day of seven hours, including necessary affidavit	£1	1	0	to	5	5	0

Or such other sum as the Court may under special circumstances order.

Chief clerk's time	£0	10	6	to	£1	11	6
Other clerk's time, per day of seven hours	0	7	6	,,	0	16	0

These charges shall include stationery, except the forms used.

Small Bankruptcies.

Where a petition is presented by or against a Debtor, and the Court is satisfied by affidavit or upon the report of the Official Receiver that the property of the Debtor is not likely to exceed £300, the Court may make an order for the summary administration of the Debtor's estate; and thereupon the Official Receiver shall be Trustee, and there shall be no Committee of Inspection, but the Board of Trade shall exercise the functions of that body. But the Creditors may, by special resolution, appoint some person other than the Official Receiver Trustee, and thereupon the bankruptcy shall proceed as if no summary order for administration had been made (§ 121).

Where judgment has been obtained in a County Court, and the Debtor is unable to pay the amount adjudged forthwith, and alleges that his whole indebtedness does not exceed £50, the Court may make an order for the administration of his estate and the payment of his debts by instalments, either in full or to such an extent as may seem practicable and just, having regard to his future earnings and income. When the amount received under the order is sufficient to pay each Creditor as directed, with the costs, the order shall be superseded and the Debtor stand discharged (§ 122).

Privilege of Parliament.

If any person having privilege of Parliament commits an act of bankruptcy, he may be dealt with under this Act in like manner as if he had not such privilege (§ 124).

Estate of Deceased Insolvent Debtor.

In case a person dies insolvent and no proceedings have commenced for the administration of his estate, a Creditor whose debt would have been sufficient to support bankruptcy proceedings had the Debtor been alive, may present a petition for the administration of the estate of the deceased in bankruptcy, and after notice to the legal personal representative of the deceased the Court may make an order for the administration of the estate in bankruptcy (§ 125, Act of 1883 ; § 21, Act of 1890).

Unclaimed Dividends.

All dividends unclaimed within six months after declaration are now to be paid to the "Bankruptcy Estates Account," into which account also all moneys arising from the property of a Debtor are to be paid ; and all unclaimed dividends or undisputed funds of bankruptcies under prior Acts are to be paid to the same account (§ 162, Act of 1883).

Punishment of Fraudulent Debtors.

By the Debtors Act, 1869 (32 & 33 Vict. c. 62, § 11), as now amended by the Bankruptcy Acts of 1883 and 1890, any person adjudged a bankrupt is in each of the cases following to be deemed guilty of a misdemeanor, unless the jury is satisfied he had no intention to defraud ; and is on conviction liable to be imprisoned for any time not exceeding 2 years, with or without hard labour :—

If he does not to the best of his knowledge and belief fully and truly discover to the Trustee all his property :

If he does not deliver up all his property in his custody, or under his control, and all books, &c., relating thereto :

If after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, or within 4 months next before the presentation of a bankruptcy petition by or against him, or in case of a receiving order made under section one hundred and three of the Bankruptcy Act, 1883, before the date of the order, he conceals or removes any part of his property to the value of £10, or if he makes any material omission in any statement of his affairs :

If, knowing or believing that a false debt has been proved by any person under the bankruptcy, &c., he fail for the period of a month to inform such Trustee thereof :

If he prevents the production of any book, &c., relating to his property or affairs, or if within 4 months next before such presentation, &c., he conceals, destroys, mutilates, or falsifies (or

is privy to any such), any book or document relating to his property or affairs :

Or if within four months next before the presentation of a bankruptcy petition by or against him, or in case of a receiving order made under section one hundred and three of the Bankruptcy Act, 1883, before the date of the order, he, by any false representation, has obtained any property on credit, and has not paid for the same ; or if he obtains, under the false pretence of carrying on business, any property on credit, or pledges, or being a trader disposes of any such, except in the ordinary way of his trade.

If he is guilty of any false representation, for the purpose of obtaining the consent of his Creditors or any of them to any agreement relating to his bankruptcy or liquidation, and by § 12 a Debtor absconding with his property to the amount of £20 and upwards is guilty of felony, punishable with two years' imprisonment with or without hard labour.

By § 13 of the Debtors Act, any person in each of the cases following is to be deemed guilty of a misdemeanor, and, on conviction thereof, liable to imprisonment for 1 year, with or without hard labour : that is to say :—

(1) If, in incurring any debt or liability, he has obtained credit under false pretences or by means of any other fraud :

(2) If he has, with intent to defraud his Creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property :

(3) If he has, with a like intent, concealed or removed any part of his property since or within 2 months before the date of any unsatisfied Judgment or order for payment of money obtained against him.

The Bankruptcy Act of 1890 repeals the provision of 24 & 25 Vict., c. 96, § 85, which enacted that no person shall be liable to be convicted of any of the misdemeanors there referred to (being frauds by agents, bankers, or factors), if he shall have first disclosed the same in any compulsory examination or deposition in bankruptcy ; but a statement or admission made by any person in any such compulsory examination or deposition is not to be admissible as evidence against him in any proceeding in respect of such misdemeanors (§ 27).

Deeds of Arrangement Act, 1887.

Previously to the passing of this Act (*a*), it had been found that a Debtor was often able to shield himself from the diffi-

(*a*) 50 & 51 Vict. c. 57 ; amended by 53 & 54 Vict. c. 24.

culties and embarrassments of bankruptcy or liquidation by making an assignment to a Trustee for the benefit of his Creditors; and unless there is anything in the character of a Debtor, or the way he has conducted his business, which needs exposing and punishing, there is little doubt, in many cases, that an assignment will be found more satisfactory in its results to Creditors than proceedings in bankruptcy.

By the present Act (which came into force on 1st January, 1888) provision was made for the publicity of such assignments; and it is now provided that Deeds of Arrangement under the Act shall include any of the following instruments made in respect of the affairs of a Debtor for the benefit of his Creditors generally (otherwise than in bankruptcy), viz.:

(*a*) An assignment of property.
(*b*) A deed of agreement for composition.
(*c*) A deed of inspectorship, entered into for the purpose of carrying on or winding up a business.
(*d*) A letter of license, authorising the Debtor or any other person to manage, carry on, realise, or dispose of a business, with a view to the payment of debts.
(*e*) Any agreement or instrument entered into for the purpose of carrying on or winding up the Debtor's business, or authorising the Debtor or any other person to carry on, realise, or dispose of the same, with a view to the payment of his debts (§ 4).

Any deed of arrangement under the Act must be registered with the Registrar of Bills of Sale within 7 days after the first execution thereof, unless it is executed out of England, and then within 7 days after the time when in the ordinary course of post such deed would have reached England (§ 5).

If the Debtor who is one of the parties to a deed of arrangement, or is referred to therein, resides or carries on business outside the London Bankruptcy District, the Registrar is to transmit a copy of such deed to the Registrar of the County Court within whose jurisdiction the Debtor resides or carries on business, and such copy shall be open to inspection at the Registrar's office.

Where a deed of arrangement assigns the Debtor's business or property to trustees for payment of his debts, provision should be made for the case of any surplus after the debts are paid. Such surplus will not "result" or revert to the assignor unless provision to that effect be made by the deed (*a*).

(*a*) *Smith* v. *Cooke*, 45 Ch. D. 38; H. L. (1891) App. Cas., 297.

SECTION IX.—SHIPPING LAW.

The law relating to merchant shipping has been consolidated by an Act of 1894 (57 & 58 Vict. c. 60), by which the provisions heretofore contained in about forty different Acts of Parliament have been repealed and for the most part re-enacted

Registration of Ships.

Every British ship is required to be registered under the Act, except that (in the United Kingdom) ships not exceeding fifteen tons burden, employed solely in river or coast navigation, are exempt from registration (57 & 58 Vict. c. 60, § 2).

Every change of ownership is to be endorsed on the certificate of registry (§ 20).

Property in a Ship.

The property in a ship shall be divided into sixty-four shares, and not more than sixty-four individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule is not to affect the beneficial title of any number of persons, or of any company, represented by a registered or joint owner. A person shall not be entitled to be registered as owner of a fractional part of a share in a ship; but any number of persons not exceeding five may be registered as joint owners of a ship or of any share or shares therein. Joint owners shall be considered as constituting one person only as regards the persons entituled to be registered, and shall not be entitled to dispose in severalty of any interest in a ship, or in any share therein in respect of which they are registered. A corporation may be registered as owner by its corporate name (§ 5).

Sale and Purchase of Ships.

On the purchase of a ship or share therein, the bill of sale conveying the ship or share from one person to another must be registered at the port of registry to which she belongs; and on transmission of property in a ship on death, marriage, or bankruptcy a "declaration of transmission" is to be entered on the registry (§§ 24, 27).

Rules are prescribed to be observed on sale as well as on mortgage of ships or shares (§§ 39-46).

Contracts by Sailors.

The superior Courts exercise a sort of guardianship over sailors, on account of their being such an extremely generous,

credulous, and improvident class of men: and assist them in defeating foolish contracts respecting their prize money or wages, whenever any inequality appears in the bargain, or undue advantage has been taken (*a*).

Supply and Engagement of Seamen.

No person may engage or supply a seaman or apprentice to be entered on board ship, unless he holds a license from the Board of Trade for the purpose, or is the owner or master or mate of the ship, or is *bonâ fide* the servant and in the constant employment of the owner, or is a superintendent in the shipping service; and no person may receive or accept to be entered on board ship a seaman or apprentice whom he knows to have been engaged or supplied in contravention of the Act, under a penalty (in either case) of £20 for each seaman or apprentice, and forfeiture of any license held by the offender (§ 111).

No person may demand or receive, directly or indirectly, from any seaman or apprentice, or from any one seeking employment as such, or from another person on his behalf, any remuneration whatever for providing him with employment, other than fees authorised by the Act (§ 112).

The master of every ship, except ships of less than 80 tons registered tonnage, exclusively employed as coasters in the United Kingdom, is required to enter into an agreement with the owner in accordance with the provisions detailed in the Act before carrying any seaman to sea, under a penalty in the case of each seaman of £5 (§ 113); and this agreement is to be in a form approved by the Board of Trade, and is to be signed by each seaman in the presence of a superintendent of the shipping service (§ 114).

The master at the commencement of every voyage is to cause a legible copy of the agreement with the owner to be posted up in some part of the ship accessible to the crew (§ 120).

Seamen not bound to go in Ship that is Unseaworthy.

There is an implied condition on the part of every shipowner that his ship shall be seaworthy and properly manned. If the ship is not seaworthy, and a seaman refuses to go to sea in her on that ground, he cannot be treated as a deserter, or punished; but the burden of proof will lie on the seaman to

(*a*) Story, Eq. Jur., § 332.

establish the unseaworthiness of the vessel. When a seaman is justified in refusing to go to sea in a ship on the ground of her unseaworthiness, he may maintain an Action to recover his effects if detained. A seaman knowingly proceeding to sea in an unseaworthy ship and sustaining injury in consequence, cannot maintain an Action, and would be without remedy against the owner.

Deck-lines and Load-lines.

Every British ship—except ships under 80 tons employed in coasting trade, ships employed solely in fishing, and pleasure yachts—are required to be marked amidships with lines (12 in. × 1 in.) painted longitudinally, and indicating the position of each deck above water; and every such ship, before proceeding to sea, is to have marked on each of her sides a circular disc (12 in. in diameter), with a horizontal line (18 in. in length) through its centre, indicating the maximum load-line in salt water fixed according to the rules of the Board of Trade (§§ 437, 438).

If a ship is so loaded as to submerge the load-line, she shall be deemed an unsafe ship within the meaning of the Act (§ 439).

Unseaworthy Ships.

Under the Act, every person who sends, or attempts, or is party to sending or attempting to send, a ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, will be guilty of a misdemeanor, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable; and every master who knowingly takes such a ship to sea, will also be guilty of a misdemeanor.

But a prosecution is not to be instituted except with the consent of the Board of Trade, or of the Governor of the British possession in which such prosecution takes place (§ 457).

Obligation of Shipowner to Crew as to Seaworthiness.

In every contract of service, express or implied, between the owner of a seagoing ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship, that such owner, and the master, and every agent charged with the loading, or preparing, or sending thereof to sea, shall use all reasonable

means to insure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep her in a seaworthy condition during the same (§ 458).

Power to detain Unsafe Ships.

Where a British ship, being in any port of the United Kingdom, is, by reason of the defective condition of her hull, equipments, or machinery, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, any such ship may be provisionally detained for the purpose of being surveyed, and either finally detained or released, under the conditions stated in the Act (§ 459).

Where a foreign ship has taken on board all or any part of her cargo at a port in the United Kingdom, and is, whilst at that port, unsafe by reason of overloading or improper loading, the provisions of the Act with respect to the detention of ships are to apply (with certain modifications) as if it were a British ship (§ 462).

Life-saving Appliances.

Rules may be made by the Board of Trade as to the number and description of boats, life-boats, life-rafts, life-jackets, and life-buoys to be carried by British ships; and it shall be the duty of the owner and master of every British ship to see that his ship is provided, in accordance with the rules, with such appliances of the life-saving referred to as, having regard to the nature of the service on which the ship is employed, and the avoidance of undue encumbrance of the ship's deck, are best adapted for securing the safety of her crew and passengers (§§ 427, 428).

Seamen's Provisions to be Inspected.

In the case of ships trading or going from any port of the United Kingdom through the Suez Canal, or round the Cape of Good Hope or Cape Horn, an officer to be appointed by the Board of Trade shall inspect the barrels of beef and pork, the preserved meat and vegetables in tins, and the casks of flour or biscuits, intended for the use of the crews, and if satisfied that they are fit for such use, certify the same accordingly (§ 206).

Seamen's Wages.

A seaman shall not, by any agreement, forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which in the absence of his agreement he would

be entitled ; and shall not by any agreement abandon his right to wages in case of the loss of the ship, or abandon any right he may have or obtain in the nature of salvage ; and every stipulation in any agreement inconsistent with any provision of the Act shall be void (§ 156).

The right to wages shall not be dependent on the earning of freight; and every seaman and apprentice is to be entitled to recover his wages, notwithstanding that freight has not been earned ; but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores shall bar his claim (§ 157).

The master, the ship, and the owner, are all liable for the payment of mariners' wages (*a*). But a promise to pay money or extra wages to the crew of a vessel as an incitement to exertion during a storm, is a void agreement, and cannot be enforced, because a sailor is bound to do his utmost to save and preserve the vessel (*b*). But if a vessel is so short-handed as to render it dangerous to life to proceed to sea, and the crew are not under articles, a promise of additional remuneration, because of increased risk, is binding (*c*).

Where, in consequence of the death of the captain during the voyage, the chief mate becomes captain, the latter has authority to appoint a seaman to the post of second mate, with the wages of such ; and a contract by such captain to that effect is binding on the owners of the vessel, notwithstanding no alteration be made in the articles under which the seaman shipped (*d*).

Where the service of a seaman terminates before the period contemplated in the agreement, by reason of the wreck or loss of the ship, or of his being left on shore at any place abroad, under a certificate of unfitness or inability, he shall be entitled to wages up to the time of such termination, but not for any further period (§ 158).

A master who is proved to have been habitually and grossly drunk on a voyage cannot recover any part of his wages (*e*).

Wages may not be Attached or Assigned.

Wages due or accruing to a seaman or apprentice in the sea service shall not be subject to attachment or arrestment ; an assignment or sale made prior to the accruing thereof shall not

(*a*) The *Stephen Wright*, 12 Jur., 732.
(*b*) *Hams* v. *Watson*, Peake, 102; 2 Camp., 317.
(*c*) *Hartley* v. *Ponsonby*, 26 L. J. Q. B., 322.
(*d*) *Hanson* v. *Royden*, 37 L. J. C. P., 66.
(*e*) *The Macleod*, 50 L. J. Ad. D., 6.

bind the person making the same; a power of attorney or authority for the receipt thereof shall not be irrevocable; and a payment of wages to the seaman or apprentice shall be valid in law notwithstanding any previous sale or assignment, or any attachment, incumbrance, or arrestment (§ 163).

Allotment of Wages.

A seaman or apprentice, or a person duly authorised on his behalf, may as soon as any wages due to him (not exceeding £50) become payable, sue for the same before a court of summary jurisdiction in or near the place where his service has terminated, or at which he has been discharged, or at which any person on whom the claim is made is or resides, and the order made by the court in the matter shall be final (§ 164).

An agreement for wages with the crew, made in a form approved by the Board of Trade, may contain a stipulation for payment to or on behalf of a seaman, conditionally on his going to sea, of a sum not exceeding one month's wages, as well as stipulations for the allotment of a seaman's wages; but save as aforesaid an agreement by or on behalf of the employer of a seaman for the payment of money to or on behalf of the seaman conditionally on his going to sea from any port in the United Kingdom shall be void, and any money paid in satisfaction or in respect of any such agreement shall not be deducted from the seaman's wages, and a person shall not have any right of action, suit, or set-off against the seaman or his assignee in respect of any money so paid (§ 140).

The seaman may require that a stipulation be inserted in such an agreement for the allotment by means of an allotment note (in a form approved by the Board of Trade) of any part not exceeding one-half of his wages in favour either of a near relative or of a savings bank. The expression "near relative" includes the wife, father, mother, grandfather, grandmother, child, grandchild, brother, or sister of the seaman (§ 141).

Illness of Seamen.

Where a seaman is, by reason of illness, incapable of performing his duty, and it is proved that such illness has been caused by his own wilful act or default, he will not be entitled to wages for the time during which he is, by reason of such illness, incapable of performing his duty (§ 160).

Whenever it is shown that any seaman or apprentice who is ill, has, through the neglect of the master or owner, not been provided with proper food and water according to his agreement, or with such accommodation, medicines, or anti-scor-

butics as are required by the Act, then, unless it can be proved that the illness has been produced by other causes, the owner or master will be liable to pay all expenses necessarily incurred by reason of such illness (not exceeding, in the whole, 3 months' wages). (§ 207.)

Property of Deceased Seamen.

If a seaman or apprentice belonging to a British ship, the voyage of which is to terminate in the United Kingdom, whether a foreign going or a home trade ship, dies during the voyage, the master shall take charge of any money or effects belonging to such seaman or apprentice, and may, if he think fit, cause any of the effects to be sold by auction at the mast, or otherwise by public auction (§ 169).

If the ship, after such death of a seaman or apprentice, touches and remains for 48 hours at a port out of the United Kingdom, the master is to report the case to the British consular officer or (in case of a British possession) officer of customs at such port, and that officer may, if he thinks it expedient, require the property of the deceased seaman or apprentice to be delivered to him; and within 48 hours after the arrival of the ship at the port of destination in the United Kingdom, the master is to deliver either the receipt of such officer for the property, or (as the case may be) the property of the deceased seaman or apprentice, to the superintendent at that port, with an account and voucher (§ 170). Penalty on the master for non-compliance with these provisions, a fine of £50, or treble the value of the property. On the failure of the master to comply with these provisions, the owner of the ship is required to deliver and account for the property of the deceased seaman or apprentice, under the like penalties (§ 171).

Property of a seaman or apprentice dying at any place out of the United Kingdom, which has been left abroad but not on board ship, is to be claimed and taken charge of by the chief officer of Customs or British consular officer at or near the place (§ 172).

Wages due to any seaman or apprentice lost with his ship may be recovered from the owner of the ship by the Board of Trade (§ 174); and property or wages belonging to any seaman or apprentice dying in the United Kingdom are to be delivered or paid by the master or owner to the superintendent of the port where the seaman or apprentice was, or was to have been, discharged, or to the Board of Trade (§ 175).

Where any property of a deceased seaman or apprentice

comes into the hands of the Board of Trade, the Board, after deducting any expenses properly incurred, are to deal with the residue as follows:—(i) If the property exceeds in value £100, they shall pay and deliver the residue to the legal personal representative of the deceased: (ii) If the property do not exceed in value £100, the Board may as they think fit either pay or deliver the residue to any claimant who is proved to their satisfaction to be the widow or a child of the deceased, or entitled to the personalty of the deceased either under his will (if any) or any statute of distribution or otherwise, or entitled to take out representation, although none has been taken out: (iii) They may, if they think fit, require representation to be taken out, and pay the residue to the legal personal representative of the deceased (§ 176).

Where a deceased seaman or apprentice has left a will the Board may refuse to pay or deliver the residue: (i) If the will was made on board ship, to any person claiming under the will, unless the will is in writing, and is signed or acknowledged by the testator in the presence of, and is attested by, the master or first or only mate of the ship; and (ii) If the will was not made on board ship, to any person claiming under the will, and not being related to the testator by blood or marriage, unless the will is in writing, and is signed or acknowledged by the testator in the presence of, and is attested by, two witnesses, one of whom is a superintendent, or is a minister of religion officiating in the place in which the will is made, or, where there are no such persons, a justice, British consular officer, or an officer of customs.

Whenever the Board of Trade refuse to pay or deliver the residue to a person claiming under a will the residue shall be dealt with as if no will had been made (§ 177).

Ship-brokers' Commission.

Ship-brokers are generally entitled, by the custom and usage of trade, to a commission of 5 per cent. on the freight payable upon the charter-party, obtained or entered into by or through them: and where the amount of freight is uncertain, they are entitled to a fair and reasonable remuneration. Their right to commission does not depend upon the fact of the ship's earning freight; and the commission is not liable to be reduced by the loss of the vessel, or her failure to get a cargo, or any such contingencies (*a*).

If a ship-broker introduce the captain of a ship to a mer-

(*a*) *Hill* v. *Kitching*, 3 C. B., 306.

chant, and they, in consequence of such introduction, enter into a negotiation for a voyage, the broker is entitled, by the custom and usage of trade, to commission, if a charter-party is effected between the captain and the merchant for that voyage: and this, too, although they employ another broker to prepare the charter-party, or prepare it themselves (*a*).

Charter-Party, Demurrage, &c.

A charter-party is a contract whereby a shipowner or shipmaster covenants for the use of the ship by the charterer for some specified period of time, or for a particular voyage or adventure.

If a vessel is described in a charter-party as A 1 (*i.e.*, a sound and tight first-class ship, so classed at Lloyd's) it is a warranty that she is A 1 at the time the description is given, but not that she shall continue so, or retain the same letter on her arrival at the port of loading (*b*).

The stipulations contained in a charter-party must be strictly performed on both sides. If the parties, by mutual consent, substitute a new port for that mentioned in the contract, the freighter will be entitled to the lay days, and the shipowner to the demurrage stipulated for by the original contract.

The terms of a charter-party cannot be varied by parole, though it may, like other mercantile instruments, be explained by the usage of trade (*c*).

The chartering of a vessel need not be in writing, though it usually is: a verbal agreement acted upon may have the same operation as a charter-party (*d*).

The charterer cannot escape from liability to pay demurrage by showing that the delay was occasioned by some unforeseen event not provided for by the contract, such as the crowded state of the docks, the delays of custom-house officers, or the inclemency of the weather, or the neglect of the holders of the bill of lading to present such bill and claim the goods. But if the delay arise from the wrongful interference of the shipowner himself with the unloading of the cargo, then the detention is not that of the charterer, and the shipowner cannot claim demurrage (*e*).

(*a*) *Burnett* v. *Bouch*, 9 C. & P., 624.
(*b*) *Hurst* v. *Usborne*, 11 C. B., 154.
(*c*) *Palmer* v. *Blackburn*, 1 Bing., 61; *Magee* v. *Atkinson*, 2 M. & W., 446.
(*d*) *Lidgett* v. *Williams*, 4 Hare, 456.
(*e*) Addison, Contracts (8th ed.), 511.

If after the loading has been completed, the vessel be detained by a sudden frost, or by foul weather and contrary winds, no right to demurrage will arise by reason of such detention (*a*).

If the merchant fail to load within a stipulated time, the master may, of course, sail home (*b*).

Where it was stipulated that £5 per day demurrage should be paid to reckon from the time of the vessel being ready to unload and in turn to deliver, it was held that the words "in turn to deliver" applied to the rules and regulations of the port of discharge, and that the charterers were not liable for demurrage until their "turn to deliver" had come, in accordance with the regulations of the port.

Freight, Lading, &c.

A merchant having taken a ship to freight, must lade her within the stipulated time: and if no time is stated, he must do so within a reasonable time (*c*).

He must lade with the stipulated cargo. He must not lade with contraband or dangerous goods (*d*).

If the goods are of a dangerous nature he must give notice; otherwise he will be liable for injuries arising in consequence (*d*).

No freight becomes due unless the carriage of the goods be completely performed (*e*). But the owner will not lose his freight because of an unavoidable interruption, such as capture and recapture (*e*).

If the goods have been thrown overboard for the preservation of the ship, the merchant must pay freight, and be repaid by a general average (*f*).

If a part of the goods be sold for necessary victuals or repairs, the owners must pay the merchant the value, and receive the freight from him (*g*).

The owner has a lien on the goods until the freight is paid, if he do not agree to waive it, and have not framed his charter-party in such a manner as to part with the possession of the vessel to the charterer (*h*).

(*a*) *Fringle* v. *Mollett*, 6 M. & W., 13; *Jamieson* v. *Laurie*, 6 Bro., P. C., 474.
(*b*) *Puller* v. *Stanniforth*, 11 East, 232.
(*c*) *Matthews* v. *Lowther*, 5 Ex., 574.
(*d*) *Brass* v. *Maitland*, 6 E. & B., 470.
(*e*) *Mashitar* v. *Buller*, 1 Camp., 84.
(*f*) The *Racehorse*, 3 Rob., A. R., 101.
(*g*) Abbott, Ship., part 3.
(*h*) Smith, Merc. L. (6th ed.), 325.

Bills of Lading.

A bill of lading is, by the custom of merchants, a negotiable document. The indorsement and delivery of a bill of lading to a third party who buys the goods therein mentioned, in ignorance as to the state of accounts between the shipper and his immediate purchaser, transfers the property to the indorsee, as completely and effectually as if the goods had been actually delivered to him.

The bill of lading is a written or printed memorandum signed by the master, acknowledging the shipment of the goods on board, and promising to deliver them at the port of destination to a person named as the consignee, or his assigns, on payment of freight, primage, and average, "the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever, excepted." The master, who thus acknowledges the receipt of the goods, and promises to carry and deliver them, is personally responsible for the fulfilment of his engagement; and the shipowner, who receives the fruit and earnings of the ship, is also liable upon the bill of lading, although he is not named therein. The duty to deliver the goods under a bill of lading arises on presentment of the bill, and if it is not presented to the master on the arrival of the ship at her place of destination, the master is not bound to keep the goods for an indefinite time on board his ship, but may deliver them to any trustworthy person to be kept until the bill of lading is presented.

The goods will not pass to third parties by the mere delivery of a bill of lading without indorsement, and the operation of the bill may be qualified and restricted by a conditional indorsement (*a*).

It appears that the indorsement of the bill of lading transfers to the indorsee the right of Action for a breach of the contract previously accrued.

The liability of the indorsee under the Statute does not continue after he has indorsed the bill of lading away, provided he do so before the arrival and delivery of the cargo (*b*).

Every consignee of goods named in a bill of lading, and every indorsee thereof, has all the rights and is subject to the same liabilities in respect of the goods as if the contract

(*a*) *Akerman* v. *Humphery*, 1 C. & P., 57; *Mitchel* v. *Ede*, 11 A. & E., 903.

(*b*) *Smurthwaite* v. *Wilkins*, 31 L. J. C. P., 214.

contained in the bill of lading had been made with himself (18 & 19 Vict. c. 111, § 1).

If the consignee appear upon the face of the bill of lading to be merely an agent, no contract to become personally liable for freight can be implied from his receipt of the goods under it (*a*).

Every bill of lading in the hands of a consignee or indorsee for valuable consideration representing goods to have been shipped, is conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods may not have been so shipped; unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board (18 & 19 Vict. c. 111, § 3).

The indorsee of a bill of lading, taking it *bonâ fide* and without notice, is entitled to the goods, freed from the right of stoppage *in transitu*, and all other rights and charges against the goods, except those specified in the bill of lading; provided his indorser had the right to indorse (*b*).

Losses on board Lighters conveying Goods ashore.

When goods are placed in lighters to be conveyed from the ship to the shore, and are lost in their passage through the neglect or want of skill of the lighterman, the loss will fall on the owner of the goods, if the lighterman be paid and employed by such owner; but if he be employed and paid by the shipowner or carrier, he is then the servant of the shipowner, expediting the goods in the further prosecution of the voyage to their place of destination: and the carrier consequently must make good the loss (*c*).

If goods are set on fire by reason of the negligence of the lighterman, the shipowners are responsible for the damage (*d*).

Wrecks and Wreckage.

Rights of wreck are *primâ facie* vested in the Crown they are said to be royal perquisites (*e*).

If sure marks have been set upon merchandise and other things, there cannot be said to have been a wreck (*f*).

(*a*) *Amos* v. *Temperley*, 8 M. & W., 798.
(*b*) *Shand* v. *Sanderson*, 28 L. J. Ex., 278, *Gurney* v. *Behrend*, 3 E. & B., 622, 633.
(*c*) *Sparrow* v. *Caruthers*, 2 Str., 1236.
(*d*) *Morewood* v. *Pollock*, 1 E. & B., 743.
(*e*) 1 Black., Comm., 291.
(*f*) Brac. Lib. 4, fol. 20.

In order to constitute a wreck, not only must there be no life saved, or vestige remaining whereby the property may be identified, but the goods must be left or cast upon the land by the sea, touching the ground; and this is the legal definition of the word "wreck" (*a*).

If a ship be pursued by enemies and be forsaken by her crew, upon which the enemy take the ship and despoil her of her goods and tackle, and turn her out to sea; then, if she be cast on land by stress of weather, where her crew have arrived, the ship is not a wreck (*b*).

Flotsam, Jetsam, and Ligan.

The goods are termed *flotsam* when the ship is sunk, or otherwise perishes, and the goods float on the sea; *jetsam*, when the ship is in danger of being sunk, and to lighten the ship the goods are cast into the sea, and afterwards, notwithstanding, the ship perishes; *ligan*, when such goods cast into the sea are so heavy that they sink to the bottom, and the mariners, in order to have them again, tie a buoy or cork to them (*c*).

Goods cast into the sea for fear of tempest are not forfeited. And so long as flotsam, &c., are upon the sea, they do not pass to the Crown, but to the first finder (*d*).

Flotsam, jetsam, and ligan being found on the land, pass by the grant of wreck, but this is only when the ship perishes, or the owner of the goods is not known (*d*).

Wreck may be, by custom, charter, grant, or prescription, the property of those to whom the land belongs where the wreck is found. But no grant of wreck will avail unless it be clearly proved to have issued legitimately from the Crown (*e*).

All property stranded belongs to the Crown *pro tem.*, and after a year and a day it belongs to the Crown absolutely. During the year and a day it is vested in the Crown for protection, until an owner can be found. If the goods be perishable they may be sold within the year, to prevent loss. The year and a day are counted from the time of seizure by the Government officer. The Crown officers have a right of way over any man's ground for the wreck (*f*).

(*a*) 2 Inst., 167; 3 Hag., 270.
(*b*) *Fishlake's Case*, 5 R., 2.
(*c*) 5 Co. Rep., 106.
(*d*) Woolrych on Waters, 13.
(*e*) 8 Rep., 56; *Alcock* v. *Cook*, 2 M. & P., 625.
(*f*) Woolrych on Waters, 17.

SECTION X.—INSURANCE.

A policy of insurance is a contract or instrument by which one party—the insurer (generally, an insurance company)—in consideration of certain premiums or payments, engages to indemnify another—the insured—against a stated peril or risk, by undertaking to make to the insured, his heirs, executors, administrators, or assigns, a payment in compensation, whenever the event shall happen by which the loss shall accrue, or upon the happening of which (as the death of the insured) the payment is to be made.

The effect of an insurance policy is thus to protect the party insured from a risk to which he would otherwise be exposed; and the insurer engages to bear the burden of the risk, and to give the other an indemnity or assurance.

The terms "insurance" and "assurance" are commonly employed as if identical in meaning, but "assurance" is in strictness applied only to the contract of life insurance; the other term, "insurance," being properly reserved for other forms of contracts of insurance.

Besides life, fire, and marine insurance, the principle of insurance is now applied to a variety of risks—such as personal accidents; injury to property (plate-glass, carriages, &c.); loss of horses, cattle, and other live stock; and, in recent years, loss by housebreaking or burglary. There are yet other forms of "insurance," providing guarantees of fidelity, or guarantees of securities, which partake of the nature of suretiship.

In construction of law, an important distinction exists between contracts of life and accident insurance, on the one hand, and the contracts of marine and fire insurance, or other insurances against loss of property, on the other. The latter are essentially contracts of indemnity, while the contract of life insurance is a mere contract to pay a certain sum on the death of a certain person, and has nothing to do with indemnifying against loss (*a*).

Where a contract of insurance is a contract indemnifying

(*a*) *Dalby* v. *India and London Life Assurance Company*, 15 C. B. 365. This case overruled the well-known case of *Godsall* v. *Boldero*, decided in 1806, in which a creditor of William Pitt's, who had insured his debtor's life, brought an action on the policy. Pitt's debts having been paid by the nation through his executors, the question arose whether the creditor could recover on the policy, and it was decided that he could not. That decision was treated as binding until 1854, when it was set aside in the case cited above.

against loss, it follows: 1. That the amount the insured can recover is limited to his actual loss, which may be recovered either by payment or reinstatement; 2. That if the thing insured is only partially destroyed, or deteriorated, the insured can only claim the value of the injury actually done, unless he surrender the thing insured to the insurer; 3. That the insured cannot "take with both hands"—that is, if he has ways and means independent of the insurer to repair his loss, he must either cede such ways and means to the insurer on being paid in full the amount of his loss, or exercise them for the benefit of the insurer.

(i) LIFE INSURANCE.

Insurable Interest.

The law requires that every person who takes out a policy of life insurance shall have an insurable interest—which must be a pecuniary interest—in the life assured; but every person is presumed to have a pecuniary interest in his own life. And the Gambling Act (14 Geo. III. c. 48) forbids insurances upon lives and other events unless there be an insurable interest.

A parent has not, as such, an insurable interest in the life of his child (*a*). A son has an insurable interest in the life of a father who supports him, but not in the life of a father whom he supports. A creditor has an insurable interest in the life of his debtor, and a surety in that of the principal creditor (*b*).

There are other interests, also, which give a right to insure: for instance, a wife may insure the life of her husband, upon whose income or exertions she is dependent (*c*), and a husband may insure the life of his wife (*d*): and the Married Women's Property Act, 1882, expressly provides that a married woman may insure her own life or that of her husband for her separate use (45 & 46 Vict. c. 75, § 11).

And it has been held that a trustee has sufficient interest to enable him to insure the life of a person who has granted an annuity to the person for whom he is trustee (*e*). Further, the mortgagee of a life estate having insured the mortgagor's life to the amount of the mortgage, it was held that the mort-

(*a*) As to children's "burial insurances" in friendly societies, see *post*, under title "Friendly Societies."

(*b*) *Dalby* v. *India and London Life Assurance Company*, 24 L. J. C. P., 2.

(*c*) *Reed* v. *Royal Exchange Assurance Company*, 24 L. J. C. P., 2.

(*d*) *Reed* v. *Key*, Peake, Ad. Ca., 70; *Huckman* v. *Fernie*, 3 M. & W., 505.

(*e*) *Tidswell* v. *Angerstein*, Peake, 151.

gagee was entitled to the policy moneys as against the mortgagor's executor (*a*).

A contract of life insurance not being a contract of indemnity, where a creditor shall insure the life of his debtor, such an insurance is an independent contract; and though, after the death of the debtor his executors pay the debt to the creditor, the latter may recover upon the policy (*b*). And should the debtor pay the debt in his lifetime, the creditor may afterwards keep the policy alive for his own benefit (*c*).

Representations on Applications for Insurance.

It is the duty of a person applying for an insurance upon his own life, or the life of another, to disclose all material facts within his knowledge. So also as to persons to whom the applicant may refer the insurance company for information. False representations made in answer to verbal questions, as well as those comprised in a list of printed questions, will avoid the policy (*d*).

Applicants must avoid also misrepresentation by the concealment of material facts, "good faith being required in all cases," as Sir George Jessel said in a well-known judgment. In that case, on the Defendant sending in his proposal, the following questions had been put to him:—"Has a proposal ever been made on your life at any other office or offices? If so, when? Was it accepted at the ordinary premium, or at an increased premium, or declined?" The Defendant's answer was: "Insured now in two offices for £1,600, at ordinary rates. Policies effected last year"; and the proposal was accepted. But upon learning subsequently that the Defendant's life had been declined by several offices, the company brought their action, asking the Court to declare the contract of insurance void, and judgment was given in their favour (*e*).

It should be remembered that the contract of life insurance is a contract to undertake an ascertained risk, and persons intending to insure may prejudice their position if they delay completion of the insurance after negotiations have begun. Thus it has been held that, although an insurance company might have accepted a proposal to insure, there was no obligation on them to accept the premium where there had

(*a*) *Preston* v. *Neele*, 12 L. R. C. H. D., 760.
(*b*) *Dalby* v. *India and London Life Assurance Company*, 24 L. J. C. P., 2.
(*c*) *Lewis* v. *King*, 44 L. J. Ch., 259.
(*d*) *Wainwright* v. *Bland*, 1 M. & W., 32.
(*e*) *London Assurance* v. *Mansel*, 11 Ch. D. 363.

been a material alteration in the risk between the acceptance of the risk and the tender of the premium (*a*).

Risks to be avoided by the Assured.

Some insurance companies do not permit their assured to undertake a sea voyage without charging an extra premium, for what is termed an extra risk. Nor will they allow them to join in any military or warlike pursuits. And if the assured go to reside in climates beyond the seas, an extra premium is charged according to the additional risk; some climates being so much more unhealthy than others; whilst in healthy climates the rate of premium is the same as in England.

Therefore, in all cases of leaving England, notice should be given to the company with whom the life is assured; for it often happens that a policy-holder has bound himself by the terms of his contract from leaving England without notice; and on his infringing those terms, the policy, and all premiums paid upon it, become forfeited.

Non-Payment of Premiums.

The greatest care should be exercised in observing the conditions of payment of premiums. If it is stipulated that the policy shall be forfeited if the premium be not paid by a given day, but may be revived on payment within a stated period, it will be essential to the revival of the policy that the life assured is in being at the time of such payment (*b*). Where, however, the policy provides that the insurance shall be valid if the premium is paid within the days of grace, the policy will not be lost if the premium be paid within that time, even though the assured die in the meantime (*c*). But where twenty-one days' grace were allowed without any such special provision, and the assured died within the twenty-one days without having paid the premium, it was held that the policy had expired, and could not be revived by payment by the executors (*d*).

Avoidance of Policies.

Although insurance policies are sometimes, in prospectuses, advertisements, &c., and even by the words of the policies, declared to be "indisputable," persons effecting insurances should bear in mind that there can be no such contract made

(*a*) *Canning* v. *Farquhar*, C. A. 16 Q. B. D., 727.
(*b*) *Pritchard* v. *Mercantile Life Assurance Company*, 27 L. J. C. P., 169.
(*c*) *Prince of Wales Life Assurance Co.* v. *Harding*, 27 L. J. Q. B., 301.
(*d*) *Simpson* v. *Accidental Death Insurance Company*, 26 L. J. C. P., 289.

in law as an *indisputable contract*. Fraud will vitiate any contract; if the assured person should destroy himself, the policy may be voidable; or if he should die at the hands of justice the policy will be rendered void (*a*): and other grounds may arise on which a payment on an "indisputable" policy may be successfully disputed (*b*).

If a policy contains a condition rendering it void in the event of the assured dying by his own hand, the condition has been held to apply to all cases of self-destruction, it being immaterial that at the time of committing the act the assured was of unsound mind (*c*). But in the absence of any condition, a policy is not vacated by the suicide of the assured while insane, for there is no principle of public policy upon which the assurance should in that case be void (*d*).

A clause is often inserted in life policies to the effect that "if the life assured should die by his own hands, the hands of justice, or by duelling, the policy will be void; but if any third party shall have acquired a *bonâ fide* interest therein, by assignment or by legal or equitable lien for a valuable consideration, or as security for money, the insurance shall nevertheless to the extent of such interest be valid and of full effect." But it appears that a person taking the policy as the personal representative of the deceased only is not within the benefit of this exception (*e*). Where an insurance company advanced money to a man upon mortgage and upon his effecting an insurance on his life in their office and depositing the policy with the company, there was a clause of this description, and the insured committed suicide. It was decided that the company and the assured stood in the same position as if the policy had been mortgaged to a third person, and that the company came within the exception in the clause; so that the policy was valid to the extent of the debt due to them at the assured's death (*f*).

Assignment of Policies.

No assignment of a policy of life assurance will confer on the assignee thereof, his executors, administrators, or assigns, any

(*a*) *Amicable Assurance Company* v. *Bolland*, 4 Bligh N. S., 194.
(*b*) See *Wood* v. *Dwarris*, 11 Ex., 493; *Wheelton* v. *Hardisty*, 8 E. & B., 265.
(*c*) *Borrodaile* v. *Hunter*, 5 M. & G., 639; *Clift* v. *Schwabe*, 3 C. B., 437; *White* v. *British Empire Asiatic Co.*, 38 L. J. Ch., 53.
(*d*) *Horn* v. *Anglo-Australian Life Assurance Co.*, 30 L. J. Ch., 511.
(*e*) *Jackson* v. *Forster*, 29 L. J. Q. B., 8.
(*f*) *White* v. *British Empire Mutual Life Assur. Co.*, L. R. 7 Eq., 394.

right to sue for the amount of such policy until a written notice of the date and purport of such assignment be given to the assurance company. And the manager, secretary, or other principal officer, must on payment of a fee not exceeding 5*s*., deliver to the person giving the notice an acknowledgment thereof in writing. (30 & 31 Vict. c. 144.)

When, therefore, a person lends money on the security of a policy of assurance on the life of the borrower or other person, the lender should, in addition to having the custody of the policy, take care that *notice*, under the hand of the borrower, be given to the insurance office, to the effect that the loan has been made and the policy assigned as a security, and specifying the amount (*a*). In the absence of such a notice, if the borrower become bankrupt, the lender will have no security for his money, but may be compelled to give up the policy for the benefit of the bankrupt's estate (*b*). And on the death of the borrower, the insurance office cannot be compelled to pay any part of the sum assured to the lender.

Further, by the Stamp Act, 1891 (54 & 55 Vict. c. 39), no assignment of a life policy shall confer on the assignee or his assigns any right to sue for the insurance moneys, or to give a valid discharge for the same, unless it is duly stamped, and no payment shall be made to any person claiming under any such assignment unless it is duly stamped (§ 118).

Payment of Claims under Policies.

Upon the death of the person whose life is insured, and the amount assured becoming payable, the burden of proof of the death rests with the persons entitled to receive payment—commonly the executor or administrator of the deceased. A usual stipulation in the policy is that such proof shall be "satisfactory" to the insurers, who, in most cases, are satisfied with the certificate of the doctor who attended the deceased.

Under an old statute (19 Ch. II. c. 6) where a person has left the country and has not been heard of for seven years, a "presumption of death" arises, but this will not dispense with such inquiry as the circumstances may admit of for the satisfaction of the insurers; and if only presumptive proof of death can be furnished to the company, they may admit this as satisfactory, but will be entitled to require security for repayment in the event of the insured person proving to be alive.

If not already admitted by the insurers, the age of the

(*a*) *Williams* v. *Thorp*, 2 Sim., 257.
(*b*) *Edwards* v. *Martin*, 35 L. J. Ch., 186.

insured person will also have to be proved before payment of the insurance moneys can be claimed. Although policies are commonly granted on the faith of the statement of age made in the preliminary application, yet it should be remembered that as the rate of premium payable depends on the age of the person, it is of the utmost importance there should be no doubt or mistake on this point. Otherwise a policy taken out in good faith, and maintained for a series of years, may prove to be void by reason of the misstatement of age. It is the better, and indeed the only wise plan, therefore, to furnish proof of age, by obtaining a certificate of birth or baptism, or such other evidence as is procurable, when the policy is taken out; and on this proof being accepted by the insurers, the age can be admitted, and an endorsement to that effect made on the policy.

Regulations as to Life Insurance Companies.

Every company established after 1870, which shall commence the business of life assurance within the United Kingdom, before obtaining a certificate of incorporation, is required to deposit £20,000 in Court, to be returned to the company so soon as its funds, accumulated from premiums, amount to £40,000.

Every company is required, at the expiration of each financial year, to issue a balance-sheet, in accordance with the forms contained in the Act; and every company must once in every five years, if established after 1870, and once every ten years if before, cause an investigation to be made into its financial condition by an actuary; and an abstract of the report of such actuary is to be made and issued in a prescribed form.

No life insurance company can transfer its business to, or be amalgamated with, another company, except upon terms approved by the High Court; and it is also provided that no policy-holder of a company amalgamated with another shall, by payment of premium or otherwise, be deemed to have abandoned any claim he would have had against his original company on due payment of premiums, or to have accepted in lieu thereof the liability of the other company, unless such abandonment and acceptance have been signified in writing by him or his agent lawfully authorized. (33 & 34 Vict. c. 61; 34 & 35 Vict. c. 58; 35 & 36 Vict. c. 41.)

Payment of Insurance Moneys into Court.

By an Act of 1896 (59 Vict. c. 8), life assurance companies are empowered to pay into the High Court (or where the head

office of the company is within the jurisdiction of the Lancaster Chancery Court, either into that court or into the High Court) any moneys payable by them under a life policy in respect of which, in the opinion of the directors, no sufficient discharge can otherwise be obtained.

(ii) FIRE INSURANCE.

The Contract of Fire Insurance.

A policy of insurance against fire being (as already explained) a contract of indemnity, the assured can only recover for such loss as he may actually sustain (*a*). It is necessary that the insured should have an interest in the property at the time of insuring, and also at the time the fire happens.

A policy of insurance against fire is a contract which is not in its nature assignable; it is merely a special agreement with the person insuring that the insurers will indemnify him against such loss or damage as he may sustain. The policy, however, may be, and often is, assigned with the consent of the insurers.

The property insured, and also the building in which it is lodged, must be correctly described. If a building be described as of a certain class, when it is of a different class, insurable only at a higher rate, the policy will be invalid. But a merely trivial misdescription or omission will not affect the insurance (*b*). And as a matter of practice, the premises are generally inspected by an agent of the insurers before the policy is drawn up.

Alteration of Premises.

Moreover, such a material alteration of the premises after the making of the policy, as will operate to increase the risk, will avoid the policy, there being an implied engagement that the insured will not alter the premises, so that they no longer agree with the description of them in the policy, and so that by reason of such alterations the risk and liability of the insurers are increased. Thus, in a decided case, it was held that the altering of a house insured, from one of two storeys to one of three, avoided the policy (*c*).

Whenever, therefore, alteration of the premises is contemplated, notice should be given to the insurers; and *à fortiori* in the event of the introduction of any machinery, or danger-

(*a*) *Chapman* v. *Pole*, 22 L. T. N. S., 306.
(*b*) *Baxendale* v. *Harding*, 28 L. J. Ex., 236.
(*c*) *Sillem* v. *Thornton*, 3 E. & B., 882; 23 L. J. Q. B., 368.

ous trade, or explosive or inflammable substances. But, upon general principles, a policy of insurance against fire is not rendered void by a mere alteration in the use to which the premises are put, after the execution of the policy.

Conditions Binding on the Insured.

Policies of fire insurance usually contain "conditions" declaring the terms on which the insurance is effected, limiting the responsibility of the insurers, and imposing duties on the insured, and these should be duly considered by persons taking out an insurance. The conditions may relate (1) to the making of the contract; (2) to right of action on claims for loss; (3) to forfeiture of the contract; (4) to the settlement of disputes; and (5) to the time of making a claim.

On the latter points a common proviso is that, on the happening of a loss, notice in writing should be given within fifteen days at latest, with particulars of value, and sometimes a statutory declaration of the truth of the account is required.

In some policies, where the property insured is situate in more places than one—under which circumstance the risk of the insurers is increased, and a total loss is improbable from a single fire—a clause providing for "average" in event of a claim is inserted. The effect of this is "to restrain the liability of the insurers, in all cases where the entire value of the property exceeds the amount mentioned in the policy, to the payment of such a proportion only of the loss sustained as the amount insured shall bear to the value of the whole of the property collectively at the time when the injury occurs. In other words, the insured will recover only such proportion of his loss as the total sum insured bears to the total value of the property covered" (*a*).

Duration of Policy.

Fire insurance policies generally run from year to year, reckoning from quarter-days, or from a date specified in the policy, and the premiums are payable accordingly, fifteen days' grace being allowed.

In a case in which a policy had been taken out, on which a premium for six months was paid "to the 14th August, 1868," it was held that the policy covered damages from a fire which occurred at 11.30 o'clock on the evening of 14th August, although no renewal premium had been paid (*b*).

(*a*) Morrell on Insurance, 54.
(*b*) *Isaacs* v. *Royal Exchange Assurance Company*, L. R. 5 Ex., 296.

Extent of Risk Insured against.

In order to substantiate a claim under a fire insurance policy, the loss must have occurred (1) by actual ignition of the property insured, or of some matter near it not intended to give heat, whereby injury has accrued to the property insured; or (2) the fire must have been the proximate cause of the loss. "Speaking generally, it may be said that, in order to entitle the insured to recover, there must have been an accident by fire, and such accident must have caused the loss, either by the fire itself or by smoke or water in consequence of it" (*a*).

Thus, where the register of a sugar-house had been kept shut by mistake, so that the sugar was overheated and spoiled, but there was no actual ignition, this was held not to be a loss by fire, but by mismanagement (*b*).

And where by the policy the plate-glass in a shop-front was insured against "loss or damage originating from any cause whatsoever, except fire, breakage during removal, alteration, or repair of premises," and a fire broke out in premises adjoining, and slightly damaged the rear of the shop, but did not approach that part where the plate-glass was, and a mob tore down the shop shutters and broke the windows for the purpose of plunder, it was held that the proximate cause of the damage was not the fire, but the lawless act of the mob (*c*).

Damage resulting from a necessary and *bonâ fide* effort to put out a fire—as, for example, spoiling of goods by water, or throwing furniture out of the windows—is within the risk insured against in an ordinary fire insurance policy (*d*); and in the Metropolis any damage done by the fire brigade in the performance of their duties is treated as damage by fire for which an insurance company is responsible (28 & 29 Vict. c. 90, § 12).

Damage from Explosion by Gas.

It is now a common provision in fire insurance policies that the company will not be responsible for loss or damage by explosion, *except* for such loss or damage as shall arise from *explosion by gas*. In a case of fire where the person insured carried on the business of extracting oil from shoddy, an inflammable vapour, evolved in the course of the process, escaped and caught fire, setting fire to other things: it after-

(*a*) Morrell on Insurance, 96.
(*b*) *Austin* v. *Drewe*, 6 Taunton, 436.
(*c*) *Marsden* v. *City and County Assurance Company*, L. R. 1 C. P., 232
(*d*) *Stanley* v. *Western Insurance Company*, L. R. 3 Ex., 74.

wards exploded and caused a further fire, besides doing damage by the explosion. It was held that the word "gas" in the policy meant ordinary coal-gas; and that the exemption of liability for loss by explosion was not limited to cases where the fire was originated by the explosion, but included cases where the explosion occurred in the course of a fire; and that the insurers were thus exempt in respect both of the damage accruing from the explosion, and of the damage done by the further fire caused by the explosion (*a*).

Where Property Insured Twice.

As a further consequence of the principle of indemnity applicable to fire insurances, if after payment of the loss by the insurers, the insured should recover compensation from another source, the insurers will be entitled to recover from him any sum he may have received in excess of the loss actually sustained (*b*). And where two parties interested in the same goods insure the goods in different offices, if each party recover the full value from his insurer, one will have a remedy over against the other, and the office which has insured the party having the remedy over will succeed to his right of remedy over (*c*).

Insurance of Property on Sale.

A policy of fire insurance not being assignable, the purchaser of property which has been insured by the vendor will not, in the absence of an arrangement with the vendor or the insurer, acquire any right to the benefit of the vendor's policy (*d*). And so where a house insured by the vendor was, after the date of the contract for sale, but before completion, partly burned down, it was held that the purchaser could not recover the insurance money or require the reinstatement of the premises (*e*). But the vendor of property taken on a compulsory sale may recover on his policy of insurance if the property be burnt before the conveyance is executed or the purchase money paid (*f*).

(*a*) *Stanley* v. *Western Insurance Company*, L. R. 3 Ex., 71.
(*b*) *Danell* v. *Tibbits*, 5 Q. B. D., 560.
(*c*) *North British Insurance Company* v. *London, Liverpool, and Globe Insurance Company*, 46 L. J. Ch., 537.
(*d*) *North of England Insurance Company* v. *Archangel Insurance Company*, 44 L. J. Q. B., 121.
(*e*) *Rayner* v. *Preston*, 50 L. J. Ch. D., 472.
(*f*) *Collingridge* v. *Royal Exchange Assurance Co.*, 47 L. J. Q. B. D., 32.

Goods Insured not to be Removed.

When furniture and other effects are insured, the policy protects them only so long as they remain in the same house as when the insurance was effected. Upon any removal of the goods to another house, notice must be given to the insurance office, that the policy may be altered accordingly.

Insurance Moneys applied in Re-building.

Where mortgaged premises are burned down, the mortgagee has a right, in certain cases, to insist on the insurance money being applied by the mortgagor in rebuilding the premises. Or, the mortgagee may, at his option, require that the insurance money be applied in paying off the mortgage. (44 & 45 Vict. c. 41, § 23.)

By the Party Wall Act, 1774, it was provided, that where the house insured is situate within the limits of that Act (London and Westminster Bills of Mortality), and is burnt down, any person interested has a right to insist upon the insurance money being laid out in rebuilding. (14 Geo. III. c. 78, § 83.)

(iii) MARINE INSURANCE.

Underwriters and Brokers.

Formerly all firms and companies, with the exception only of two chartered companies—the Royal Exchange and the London—were prohibited by law from taking marine insurances. In 1824, this prohibition was removed, and marine insurance placed on the same legal footing as other insurances; but a large proportion of marine insurance—unlike other insurance business—is still carried out at the risk of individual insurers, independently of any company.

By the contract of marine insurance one party, for a stated sum, undertakes to indemnify the other—it may be the owner of the ship, or the owner of goods on board—against loss arising from "perils of the sea" to which the ship or the merchandise, or other interest, may be exposed during a certain voyage, or a certain period of time. The insurers are called "underwriters," because they *subscribe* the policy.

Insurances—whether covering the ship, the goods, or other interest (such as the freight, payable only on the ship reaching its destination)—are usually effected by brokers, who are employed by the party intending to insure. The broker is the agent of the assured, to effect the policy; but he is not

solely his agent; he is a principal also for the underwriter to receive the premium from the assured, and is liable to the former for it (*a*).

If an insurance broker be guilty of negligence in effecting an insurance, he will be responsible for all damages sustained by his principal in consequence, and will be liable for the full amount ordered to be insured, or to a total or average loss, as the case may be (*b*).

Descriptions of Marine Insurance Policies.

Of the various kinds of policies, a *valued* policy is where the agreed value of the subject-matter of insurance, as between the underwriter and the insured, is stated in the policy; ships and freight being generally insured by valued policies. An *open* policy is where the value of the subject-matter is not stated in the policy as between the underwriter and the assured, but is left to be ascertained in the event of loss; merchandise being generally insured by open policies. A *voyage* policy is where the risk insured against is for a particular voyage from port to port specified in the policy. A *time* policy is where the risk insured against is for a fixed time specified in the policy. A time policy cannot be made for any period exceeding twelve months (30 & 31 Vict. c. 23, § 1).

No particular form is requisite for a policy of marine insurance, but no such insurance will be valid unless expressed in a policy specifying (1) the particular risk, (2) the names of the underwriters, and (3) the sum or sums insured (30 & 31 Vict. c. 23, § 7). "Wager policies," effected by persons who have no interest in the subject-matter insured, are unlawful, and cannot be enforced (19 Geo. II., c. 37). Although the insurance "slip," when initialled or accepted by underwriters or an insurance company, is treated in the ordinary course of business as a contract to insure, it cannot be sued upon, or used as evidence of a contract of insurance (*c*). But a policy in pursuance thereof having been issued, it may be referred to for the purpose of showing the intention of the parties at the time of the execution of the policy (*d*).

Marine insurances being contracts of indemnity, the amount stated in a valued policy of insurance *on a ship* against a total

(*a*) *Power* v. *Butcher*, 10 B. & C., 340.

(*b*) *Chapman* v. *Walton*, 10 Bing, 57; *Cahill* v. *Dawson*, 26 L. J. C. P., 253.

(*c*) *Fisher* v. *Liverpool Marine Insurance Company*, 9 L. R. Q. B., 418; *Parry* v. *Great Ship Company*, 33 L. J. Q. B., 41.

(*d*) *Ionides* v. *Pacific Insurance Company*, 41 L. J. Q. B., 90.

loss will be taken as conclusive of the question of value, unless the value be enormously overstated, which will be evidence of fraud (*a*).

On the other hand, in a valued policy *on freight*, the Court will look into the elements of the valuation to ascertain whether it is founded on the full freight, with or without deductions (*b*).

Particular and General Average.

Particular average arises where loss is caused by the perils insured against to the subject-matter of the insurance, whether ship or cargo: which loss, instead of falling on all interested in the voyage, "rests where it falls"—that is, falls solely on the owner of the property lost or injured. *General average* is a contribution by the owners of the ship, freight, and cargo, to compensate the owner of a particular part of the ship or cargo whose property, by reason of the perils insured against, has been sacrificed for the common good—for example, a jettison of cargo. The whole adventure, however, must have been in danger of being lost for a right to general average to accrue: "the sacrifice must have been for the general good" (*c*).

"Average," it will be seen, in marine insurance, is distinct from "average" as the term is used in fire insurance (*ante*, p. 265).

Goods stowed upon deck and thrown overboard during a storm are not excluded from the benefit of general average and contribution, unless it be shown that the lading was improper and calculated to impede the navigation of the vessel, and increase the risk of the voyage (*d*).

To establish a claim for general average, it must be shown that the goods were thrown overboard in a moment of distress and danger, with a view of preserving ship and cargo. If they have been washed out of the ship by the violence of the waves, or have been damaged or destroyed by lightning, or tempest, or unnecessarily cast overboard by the master or crew, or by passengers, the loss will not support a claim for general average (*e*).

(*a*) *Bruce* v. *Jones*, 1 H. & C., 769; *Lewis* v. *Ruskin*, 2 Bour., 1171.

(*b*) *Williams* v. *North China Insurance Company*, 1 C. P. D., 757

(*c*) The *Copenhagen*, 1 Rob., 289. "Particular average," said Lord Stowell, "is not a very accurate expression; for it means damage incurred by or for one part of the concern, which that part must bear alone, so that in fact it is no average at all; but still this expression is sufficiently understood and received into familiar use."

(*d*) *Milward* v. *Hibbert*, 3 Q. B., 120.

(*e*) *Mouse's Case*, 12 Co., 63.

If the masts and cables have been cut away to prevent shipwreck, the owners of the cargo must contribute towards the loss of the shipowner; but if they are blown away or injured in consequence of the necessity of carrying a great and unusual pressure of canvas, to escape a threatened danger, the loss is not the subject of contribution and general average, but is a common sea risk, which must be borne by the ship (*a*).

If part of the cargo has been taken out and put into lighters, to enable a stranded vessel to be got afloat and sent into port for repairs, the whole expense of the operation, which is for the common benefit of ship, goods, and freight, forms the subject of general average (*b*); but not expenses incurred after the cargo has been safely discharged and warehoused for the purpose of saving the ship alone (*c*).

As soon as the average has been calculated, and the exact amount of contribution ascertained, an Action may be brought for its recovery (*b*).

Amount to be Recovered.

Where more than one insurance has been effected, the assured may recover his loss against any one of the underwriters; but he is not entitled to be satisfied twice, and he can only recover the amount of his actual loss. If he recover the whole from one set of underwriters, they may sue the others for contribution (*d*).

(iv) INSURANCE AGAINST ACCIDENT.

Nature of the Insurance.

What is generally known as accident insurance is analogous to life insurance, the contract not being one of indemnity against a loss which can be valued (*e*), but a contract on the part of the insurer to make a certain payment, or series of payments, on the happening of a specified event—namely, the death of the insured from accident, or his receiving bodily injury from an accident.

(*a*) *Birkley* v. *Presgrave*, 1 East, 220; *Power* v. *Whitmore*, 4 M. & S., 149.
(*b*) *Moran* v. *Jones*, 7 E. & B., 533. (*c*) *Job* v. *Langton*, 6 E. & B., 792.
(*d*) *Morgan* v. *Price*, 4 Ex., 615; *Bruce* v. *Jones*, 1 H & C., 769; 32 L. J. Ex., 132; *Commercial Union Assurance Co.* v. *Lister*, 43 L. J. Ch., 601.
(*e*) The case is different with what is sometimes also called "accident insurance," where a company insures an employer against claims under the Employers' Liability or the Workmen's Compensation Acts for accidental injuries to workmen, the contract of insurance in such a case being a contract of indemnity against a legal liability.

The insurance may be against (1) death alone, or (2) against (i) total or (ii) partial disablement; and in case of disablement the practice is (for obvious reasons) to insure the weekly or other periodical allowances for a limited period only after the occurrence of the accident.

In the case of insurance against accident, an insurable interest in the life or health of the person insured is requisite under 14 Geo. 3, c. 48 (*a*).

Death Not Arising from Accident.

It is a common exception in policies of insurance against accidental death, that the insurance shall not apply if death result from the "exposure of the insured to obvious risk." Where an insured person was killed in attempting in broad daylight to cross the main line of a railway in front of an approaching train, at a place where there was no station or proper crossing, and no obstruction to prevent him from seeing an approaching train, it was held that the risk thus incurred by him came within the exception mentioned above (*b*).

Where the insurance was against loss of life and personal injuries arising from "accidents at sea," and the assured died at sea from sunstroke, it was held that the death did not arise from an "accident" within the meaning of the policy (*c*). But where the naked body of a person assured was found on the beach some days after he had gone to bathe in the sea, this was held sufficient evidence of death from accident (*d*).

In a case where it was expressly provided that the insurance should not extend to "death arising from disease, though accelerated by accident," and the insured was seized with an epileptic fit whilst crossing a shallow stream, and was drowned in consequence; it was held that this was an "accident" covered by the insurance (*e*). And where the assured, a person subject to epilepsy, met his death by falling on a railway and being run over by an engine, it was held that this also was "accidental death," and was not excluded by such a proviso (*f*).

(*a*) *Shilling* v. *Accidental Death Company*, 1 F. and F., 116.

(*b*) *Cornish* v. *Accident Assurance Company*, 23 Q. B. D., 453.

(*c*) *Simpson* v. *Accidental Death Insurance Company*, 2, C. B. N. S., 257; 26 L. J. C. P., 289.

(*d*) *Trew* v. *Railway Passengers Assurance Company*, 6 H. & N., 839; 30 L. J. Ex., 317.

(*e*) *Winspear* v. *Accident Insurance Company*, 6 Q. B. D., 42; 50 L. J. Q. B., 292.

(*f*) *Lawrence* v. *Accident Insurance Company*, 7 Q. B. D., 216; 50 L. J. Q. B., 522.

Where death occurred from hernia caused solely by violence it was held to be death from accident (*a*); but death from erysipelas following an accident was held not to be accidental death (*b*).

When a person insured against accidents is killed by accident, if an action should be brought by the surviving relatives for compensation under Lord Campbell's Act (see *ante*, p. 102) the insurance money will have to be taken into account in calculating the damages. The Railway Passengers Act, however, provides that no contract of a railway company, nor any compensation received or recoverable by virtue of any such contract, shall prejudice or affect any right of action, or demand, which any person or his executors or administrators may have against any other company or any person under Lord Campbell's Act, or otherwise, for the injury in respect of which the compensation is received or recoverable.

(v) FIDELITY INSURANCE.

As already mentioned, this is a form of "insurance" in the nature of suretiship or guarantee, in which the companies who undertake such business enter into a bond (or policy of insurance), guaranteeing payment of a fixed sum in the event of a failure of fidelity on the part of the person whose fidelity is insured, in consideration of the payment of annual premiums, varying according to the position and responsibility of the insured.

Any person holding, or about to hold, a position of trust and confidence, may thus, by the payment of a stipulated annual premium, avoid the unpleasant necessity of resorting to relatives or friends to be answerable for his conduct and actions; while the latter are relieved from undertaking troublesome obligations. The employer of the person whose fidelity is thus insured, on the other hand, is freed by a guarantee policy from many of the anxieties which the system of personal bonds of suretiship entail as to the existence and solvency of the sureties (*c*).

Policies of fidelity insurance must be in writing, under the Statute of Frauds (see *ante*, pp. 214, 215); and are made out

(*a*) *Fitton* v. *Accidental Death Assurance Company*, 17 C. B. N. S., 122; 34 L. J. C. P., 28.

(*b*) *Smith* v. *Accidental Assurance Company*, L. R. 5 Ex., 302; 39 L. J. Ex., 211.

(*c*) Morrell on Insurance, 25

in the form of bonds to pay to the insured's employer the amount insured in the event specified in the policy.

In addition to the terms of guarantee, such policies generally contain provisions requiring the employer to give notice to the insurers of any default or defalcation of the employed whose fidelity is insured; to forward any claim made under the policy, with sufficient particulars and proofs, within a stated time; to make no change in the duties and remuneration of the employed, as stated in the application for the policy, without the consent of the insurers; and in the event of fraud or dishonesty on the part of the employed involving a claim under the policy, to prosecute the offender to conviction, and at the expense of the insurers, should a conviction be obtained.

The employer is also usually required to give information and assistance to the insurers, to enable them to sue for reimbursement by the employed of moneys paid by the insurers under the policy.

It is generally provided, further, that only one claim shall be made under a policy.

Where the employer is required to prosecute a defaulting employee as a preliminary to the completion of the proof of a claim made under a policy, this is a condition precedent, without the fulfilment of which payment of the claim by the insurers cannot be enforced (*a*).

Where a continuing guarantee has been given for the honesty of an employee, if the employer discovers that the employee has been guilty of dishonesty, and he continues him in his employment without the knowledge and consent of the surety, he cannot afterwards have recourse to the surety for any loss which may arise through the employee's dishonesty (*b*).

(*a*) *Lister* v. *London Guarantee Company*, L. R. 5 App. Ca., 911.
(*b*) *Phillips* v. *Foxall*, L. R. 7 Q. B., 666.

SECTION XI.—BAILMENTS.

Bailee and Bailor.

A *bailee* is a person who takes goods into his charge to keep, carry, or repair, for the use of another, who is termed the *bailor;* and the goods are termed the *bailment.*

Liability of Carriers, Borrowers, and other Bailees.

A breach of trust undertaken voluntarily is a good ground for an Action. The confidence induced by undertaking any service for another is a sufficient legal consideration to create a duty in the performance of it. A gratuitous and voluntary agent, who has given no special undertaking, must not be guilty of gross negligence. But a mistake is not gross negligence (*a*). And a bailee is not liable for such accidents and casualties as happen by the act of God, fire, tempest, &c. (*a*).

If a man undertake to carry goods safely and securely, he is responsible for any damage they sustain in the carriage through his neglect, although he is not a common carrier, and is to have nothing for the carriage (*a*). And so with a railway or other carrying company.

If goods are deposited with a friend, and are stolen from him, no Action will lie against the friend, unless he took upon himself expressly to do such a part safely and securely; or unless he be guilty of gross negligence.

But if a man undertake specially to keep goods safely, that is a warranty, and will oblige the bailee to keep them safely against perils, where he has his remedy over; but not against such where he has no remedy over.

The Different Sorts of Bailments.

Six sorts of bailments are generally recognised, according to the distinctions drawn nearly 200 years ago by Lord Chief Justice Holt in a noted leading case (*b*), "one of the most celebrated ever determined in Westminster Hall." He there enumerated them as follows:—

1. *Depositum;* or a naked bailment of goods delivered by one to another to keep for the bailor.

2. *Commodatum;* or when goods or chattels are lent to a friend to use *gratis*, and to be restored.

3. *Locatio et conductio;* or when goods are left with a bailee to be used by him *for hire* (the lender is called *locator*, the borrower *conductor*).

(*a*) *Coggs* v. *Bernard*, 1 Smith, L. C. (8th ed.), 199.
(*b*) *Coggs* v. *Bernard*, 1 Smith, L. C. (8th ed.), 205.

4. *Vadium*, or pawn, *i.e.*, a security for money borrowed.

5. *Locatio operis faciendi;* when goods or chattels are delivered to be carried, or something to be done about them, for a reward to be paid to the bailee.

6. *Mandatum;* when there is a delivery of goods or chattels to somebody who is to carry them, or do something about them *gratis*.

As to the bailment No. 1 (*Depositum*); the bailee is not answerable if the goods are stolen without any fault of his, neither will a *common* neglect make him chargeable; but if he is guilty of gross neglect he will be liable (*a*). And if a person find goods belonging to another, he is bound to take the same care of them as a depositary.

A bailee who does a friendly office only is the *least* chargeable for neglect of any of the bailees; there must be *gross* neglect in such a bailee in order to make him liable (*a*). For an *unpaid agent* is liable for gross negligence and nothing else, with but *one* exception, viz.: If a man gratuitously undertake to do a thing to the best of his skill, when his situation or profession is such as to imply skill, an omission of that skill is imputable to him as gross negligence.

Where a waiter at a restaurant took a customer's coat without being requested, and hung it up behind the customer's chair, and while the customer was dining the coat was stolen; the customer in an action recovered damages from the restaurant keeper, it being held on appeal by the Divisional Court there was no evidence of negligence to support the verdict (*b*).

In the leading case above cited (*a*) the Defendant undertook to take up several hogsheads of brandy, then in a certain cellar, and to lay them down in another cellar; when, in so doing, one of the casks was staved and a great quantity of brandy spilt: it was held that the Defendant was liable in damages to the Plaintiff (*a*).

In another case the Defendant undertook *gratuitously* to get a fire policy, and in so doing neglected certain formalities which rendered the policy inoperative; the premises were burnt and it was held that an Action would lie against the Defendant for negligence (*c*).

And where the Defendant, who was a coffee-house keeper, in an Action brought against him as a bailee of money entrusted to his care *without reward*, had placed the money in his own

(*a*) *Coggs* v. *Bernard*, 1 Smith, L. C. (8th ed.), 199.
(*b*) *Uitsen* v. *Nicols* (1894) 1 Q. B., 92.
(*c*) *Wilkinson* v. *Coverdale*, 1 Esp., 74.

cash-box in the tap-room, which had a bar in it and was open on Sundays, though other parts of the house were not, and the cash-box was stolen on a Sunday; it was held that his having lost his own money along with it did not acquit him of *gross negligence* (*a*).

But in a later case, where a customer deposited debentures with his bankers for safe keeping and they were stolen by the cashier in the bank, it was held that, in the absence of gross negligence, the bankers were not liable to make good the loss (*b*).

As to bailment No. 2 (*Commodatum*, or lending *gratis*), the borrower is bound to the strictest care and diligence to keep the goods, so as to restore them back again to the lender; because the bailee has a benefit by the use of them; so that if the bailee be guilty of the least neglect he will be answerable (*c*).

As to the *gratuitous* bailment of a chattel lent for use, the duties of borrower and lender have thus been laid down:—The borrower is not responsible for reasonable wear and tear; but he is for negligence, for misuse, for gross want of skill in the use, and above all for anything which may be qualified as legal fraud. So, the lender must be responsible for defects in the chattel with reference to the use for which he knows the loan is accepted, of which he is aware, and owing to which the borrower is directly injured. By the necessarily implied purpose of the loan, a duty is contracted towards the borrower not to conceal from him those defects known to the lender which may make the loan perilous or unprofitable to him (*d*).

If the bailee put a borrowed horse in his stable, and the horse be stolen from thence, the bailee will not be answerable. But if he or his servant leave the stable door open, and the horse be stolen, he will be liable (*c*).

As to bailment No. 3 (*scilicet*, *Locatio*, or lending for hire). In this case the bailee must also take the utmost care, and return the goods when the time of hiring is expired. But the bailee is *not* liable if the goods are stolen, provided he use proper care (*c*). If a hirer of a horse doctors it himself instead of calling in a veterinary surgeon, the hirer will be responsible to the owner if the horse die (*e*).

If a man deliver a chattel to another to be used for hire,

(*a*) *Doorman* v. *Jenkins*, 2 A. & E., 256.
(*b*) *Giblin* v. *McMullen*, 38 L. J. C. P., 25.
(*c*) *Coggs* v. *Bernard*, 1 Smith, L. C. (8th ed.), 199.
(*d*) *Blakemore* v. *B. & E. Rail. Co.*, 8 E. & B., 1035; and see *McCarthy* v. *Young*, 30 L. J. Ex., 227.
(*e*) *Deane* v. *Keate*, 3 Camp., 4.

and expressly or impliedly represent it to be fit for immediate use, or to be applicable to any particular purpose, he impliedly warrants the use for which he receives the hire (*a*).

A borrower cannot set up a right to detain the chattel for the payment of necessary expenses incurred by him in the keeping and preserving. The proper course is to give up the chattel and sue the owner upon the claim.

If the thing which is let to hire be stolen without any neglect or want of care on the part of the hirer, the latter will not be responsible for the loss; but a robbery by force must be proved, or, if a secret theft, it must be shown by the hirer that he had taken all such precautions, as to the thing hired, as are ordinarily taken by prudent men to protect their own property from depredation (*b*).

As to bailment No. 4 (*Vadium*, or pawn). The pawnee has a special property in the pledge, which is a security that he shall be repaid his debt. If the pawn be such as will be the worse for using, the pawnee must *not* use it, but if it be such as will never be the worse, as jewels, he may use them, *but he will do so at his peril*,—for if the pawnee had kept them locked up in a cabinet, and the cabinet was broken open, and the jewels stolen, the pawnee would not be liable: but if they are stolen whilst being worn out of doors, he will be (*c*).

But if the money for which goods were pawned be tendered to the pawnee before they are lost, then the pawnee shall be answerable, because the pawnee, by detaining, is a wrongdoer. And a man who keeps goods by wrong must be answerable for them at all events; for the detaining is the reason of the loss (*c*).

If the pawn be such as the pawnee is at any charge about maintaining it, as a horse, &c., he may use it in a reasonable manner (*c*).

Possession is of the essence of a pawn; and if the pawnee part with possession, he loses the benefit of the security. (See further as to the law relating to pawning and pledges under "Pawnbrokers," *post*, p. 283.)

As to bailment No. 5 (Delivery to carry for a reward, *Locatio operis faciendi*). If it be to a person who exercises a public employment, he is bound to answer for the goods at all events, except the acts of God and the enemies of the Queen. Though he be robbed by an irresistible multitude, yet he is liable (*c*).

Liability is considerably extended in two cases, viz.:—where

(*a*) Addison, Contr. (8th ed.), 344. (*b*) *Ibid.*, 346.
(*c*) *Coggs* v. *Bernard*, 1 Smith, L. C. (8th ed.), 226 *et seq.*

the bailee is an innkeeper or a common carrier. A person who conveys passengers only is not a common carrier (*a*). A carrier of passengers (as a railway company) is not responsible for a passenger's merchandise, but only for personal luggage—unless the passenger gave it up as such, or carry it openly (*b*).

As soon as goods are delivered to a carrier they are at the risk of the *consignee*, though the consignor pay the carriage. But it is otherwise where goods are sent merely for approval—or the consignee is agent of the consignor—or where the carrier is employed by the consignor and the goods are at his risk (*c*).

Where goods are delivered at the terminus of one railway to be carried to the terminus of another, it may be inferred that the first company is answerable for the whole transit, though in part over the line of another company (*d*).

The bailment No. 6 (*Mandatum*) is under the same liabilities only as *Depositum;* the keeping, carrying, and working upon *gratis*, incurs no other liability but for gross negligence (*e*). A gratuitous agent, however, must use such skill as he possesses: he must not ride or drive a borrowed horse unskilfully, if he be skilful.

There is also this distinction to be made between gratuitous mandatories and deposits:—Where the bailment is for the benefit of the bailor alone, the bailee is liable only for gross negligence; where the bailment is for the benefit of the bailee alone, the bailee is bound in the very strictest diligence; where the bailment is for the benefit of both (which includes *locatio rei*, *vadium* and *locatio operis*), the bailee must use an ordinary and average degree of diligence (*e*).

Wharfingers, Warehousemen, Pantechnicon Proprietors.

These are bound to take the same care of goods, furniture, and chattels intrusted to them, which careful men would be expected to take of their own property. They are *primâ facie* liable for all damage or injury to the goods whilst in their keeping, also for any thefts committed by their own servants, and can only exonerate themselves by showing that the greatest care on their part could not have prevented the thefts.

(*a*) *Coggs* v. *Bernard*, 1 Smith, L. C. (8th ed.), 234.
(*b*) *G. N. R. Co.* v. *Shepherd*, 8 Ex., 30; *Cahill* v. *L. & N. W. R. Co.*, 10 C. B. (N.S.), 154.
(*c*) *Coggs* v. *Bernard*, 1 Smith, L. C. (8th ed.), 255.
(*d*) *Muschamp* v. *Lanc. Rail. Co.*, 8 M. & W., 421; *Webber* v. *G. W. R. Co.*, 34 L. J. Ex., 170.
(*e*) *Coggs* v. *Bernard*, 1 Smith, L. C., 261.

But in the case of delivery to a private person—as a factor and such like—though he is to have a reward, yet he is only expected to do the best he can; and if he is robbed, &c., it is a good account; and the reason of his being a servant is not the thing, for he is at a distance from his master: and if he receive his master's money and keep it locked up with reasonable care, he shall not be answerable, though it be stolen (*a*).

A warehouseman who does not use ordinary diligence about goods intrusted to him, by having his crane and tackle in proper order, is liable to the bailor if damage be done to the goods (*b*).

Goods warehoused in the ordinary course of business at a furniture depository or pantechnicon are privileged from distress for rent due to the proprietor of the depository (*c*).

Bailee of Cattle or Sheep.

If a man undertake the charge of cattle or sheep, and afterwards take no heed of them, but allow them to stray away, and they get stolen, drowned, or injured, it will be a breach of trust, and he will be responsible for the loss or injury (*d*).

If he turn a horse (of which he has consented gratuitously to take charge) into a dangerous pasture after dark, and the horse falls into a pit or into the shaft of a mine, it will be a gross neglect and breach of trust, and he will be responsible for the loss.

Lien on Goods and Chattels for Outlay upon them.

If a bailee, being a mechanic, artificer, or other person, expend labour and skill on goods delivered to him for that purpose, he has a lien at common law for his charge for the work.

So a farrier, by whose skill a horse is cured of a disease, and a horse-breaker, by whose skill a horse is rendered manageable, have each a lien on the animal in respect of their charges (*e*). And the keeper of a stallion has a lien on a mare sent to him to be covered. But if the owner expressly stipu-

(*a*) *Coggs* v. *Bernard*, 1 Smith, L. C. (8th ed.), 214.
(*b*) *Thomas* v. *Day*, 4 Esp., 262; *Wood* v. *Curling*, 15 M. & W., 626; 16 M. & W., 628.
(*c*) *Miles* v. *Furber*, 42 L. J. Q. B., 41.
(*d*) *Broadwater* v. *Blot*, Holt, 547.
(*e*) *Scarfe* v. *Morgan*, 4 M. & W., 270, 283.

late for the possession of his horse when required it is otherwise (*a*).

So also a trainer of race-horses has a lien on the horses to the amount of his charges for keeping and training them (*b*). And a carriage-maker has a lien for the repairs done to a carriage delivered to him to be repaired (*c*). And an innkeeper has a lien to the amount of his bill on the horses of his guest which have been kept at the inn, although occasionally used by the guest (*d*).

But a livery stable keeper has no lien on the horse for its keep, because the owner impliedly, if not expressly, stipulates for the possession when required (*e*). And upon the same principle, an agister of cattle has no lien, because the nature of the bailment is inconsistent with a detention by him (*f*).

Liens of Bankers, Factors, and Others.

By the usage of particular trades or professions, or by express agreement, a lien may be created for the general balance of an account between the parties; as in the case of an attorney who has a lien for his general balance on the deeds and papers of his clients which have come to his hands in the course of his employment (*g*). So also a banker has a general lien upon the securities of his customer (*h*). And a factor has a general lien upon all goods consigned to him as a factor (*i*).

A person who has merely a lien on goods has no right to sell them (*j*).

[As to jurisdiction of magistrates in case of liens on goods or articles, see *post*, p. 290.]

Letting and Hiring of Horses and Carriages.

Every person letting a horse or carriage for hire for the purpose of performing any particular journey is considered to warrant the horse or carriage, as it may be, fit, proper, and competent for the journey or purpose for which it is hired.

The hirer must act prudently towards the horse or carriage;

(*a*) *Scafe* v. *Morgan*, 4 M. & W., 350; and see *Jackson* v. *Cummins*, 5 M. & W., 350.
(*b*) *Bevan* v. *Waters*, Mo. & M., 236.
(*c*) *Green* v. *Shewell*, cited 4 M. & W., 277.
(*d*) *Smith* v. *Allen*, 31 L. J. C. P., 306.
(*e*) *Judson* v. *Etheridge*, 1 C. & M., 743.
(*f*) *Jackson* v. *Cummins*, 5 M. & W., 342.
(*g*) Chitty, Archbold, Pract. (14th ed.), 111.
(*h*) *Barnett* v. *Brandao*, 6 M. & G., 630.
(*i*) *Dixon* v. *Stansfeld*, 10 C. B., 398.
(*j*) 1 Smith, L. C., 763.

he is answerable for ordinary negligence. If the horse turn lame on the journey, the hirer may leave it at an inn or elsewhere, and give notice to the party of whom he hired, whose duty it is, in such case, to send for the horse (*a*).

The owner of the horse or carriage let for hire is, in general, liable for any accident which may befall them, when fairly used by the hirer. So that if the carriage break down on the journeys, the person letting it is liable, not the hirer. But if it break down through some act of the hirer which is not within the contract, the person who let the vehicle will not be liable (*b*).

If a man let a horse, saddled and bridled and prepared for immediate use by an equestrian, he impliedly warrants the equipments to be road-worthy and fit for use, and the horse itself to be well shod and free from such vices and defects as render it dangerous and unfit to ride (*c*).

But if a man let out the mere fabric of a coach or carriage, upon the understanding that the hirer is to provide the horses, servants, and equipments, and prepare the vehicle for use, there is no implied warranty that the chattel is in any particular state (*d*).

Liabilities of Letter and Hirer for Injuries to Third Parties.

If a carriage and horses are let out on hire, and the owner of the carriage provides a driver the owner, not the hirer, of the carriage will be responsible for injuries to any third party, or to his property, resulting from the negligent and careless driving of the carriage (*e*).

The owner of a cab is responsible for the acts of the driver whilst plying for hire, as if the relationship of master and servant existed (*f*). But if the hirer drive himself, or appoint his own driver, and furnish the horses, then the owner of the carriage will not be responsible, but the hirer (*g*).

Borrowed Horse or Carriage.

A person borrowing a horse or carriage is liable for any damage occasioned by negligent driving or mismanagement, whether done by himself or by his servant.

(*a*) *Sutton* v. *Temple*, 12 M.&W., 60 ; *Holmes* v. *Onion*, 3 C B. (N.S.), 190.
(*b*) *Blackmore* v. *B. & E. R. Co.*, 27 L. J. Q. B., 167.
(*c*) Addison, Contracts (8th ed.), 344.
(*d*) Jones, Bailments, 118.
(*e*) *Laugher* v. *Pointer*, 5 B. & C., 572 ; *Quarman* v. *Burnett*, 6 M. & W., 507.
(*f*) *King* v. *London Improved Cab Co.*, 22 Q. B. D., 281.
(*g*) *Croft* v. *Alison*, 4 B. & Ald., 590.

SECTION XII.—PAWNBROKERS.

The business of pawnbrokers prior to 1872 was regulated by a series of statutes extending from James I. c. 21 to 22 & 23 Vict. c. 21; but by the Pawnbrokers' Act, 1872 (35 & 36 Vict. c. 93), the law relating to pawnbrokers was consolidated, with extensive amendments.

Pawnbrokers are required to take out licences, granted by the Commissioners of Inland Revenue on payment of a yearly duty of £7 10s., and on production (except in the case of a person who was a licensed pawnbroker on the 31st December, 1872) of a magistrate's certificate. This certificate is not to be refused to an applicant who gives satisfactory evidence of good character, and proof that the shop in which he intends to carry on business, or an adjacent house or place owned or occupied by him, is not frequented by thieves or persons of bad character.

A pawnbroker must always keep exhibited in large characters over the outer door of his shop his Christian and surname, with the word "pawnbroker"; and he must also keep in a conspicuous part of his shop, so as to be legible to every person pawning or redeeming pledges, the same information as is required to be printed on the pawn-tickets. Failing compliance with these conditions he will be guilty of an offence against the Act (§ 13).

Damage to Pledge.

If the pledge be destroyed or damaged by fire, the pawnbroker is bound to pay the value of the pledge after deducting the amount of the loan and profit; such value to be the amount of the loan and profit, and 25 per cent. on the amount of the loan, and he may insure for a value calculated on this basis (§ 27).

A Justice may award a reasonable satisfaction for any pledge which has become of less value through the default, neglect, or wilful misbehaviour of the pawnbroker (*a*).

Loss of Pawn-ticket.

If the pawn-ticket be lost, destroyed, or stolen the person claiming to be the owner of the pledge to which it relates may apply to the pawnbroker for a printed form of declaration to be made before a Magistrate, as to the loss of the ticket, which, on being duly made, and some person having duly declared that he knows the declarant, and such declaration having been

(*a*) See *Shackwell* v. *West*, 29 L. J., 45.

delivered to the pawnbroker within 3 days after obtaining the form therefor, will reserve to such person the same rights and remedies as if he produced the pawn-ticket. Any person making a false declaration is guilty of a misdemeanor, and may be punished as if he had committed perjury (§ 29) (*a*).

In the absence of such a declaration the pawnbroker will be bound to deliver the pledge to any person who produces the ticket and claims to redeem the same (§ 25) (*b*).

A pawnbroker must not take in a pledge unless he gives a pawn-ticket, and he must not retain a pledge unless the pledger takes the pawn-ticket (§ 14).

Rates of Interest, &c., on Loans.

Pawnbrokers must not take any profit, or demand any charge whatever, in respect of loans on pledges, other than what is authorised by the 3rd schedule to the Act (§ 15), viz. :—

For Loans of 10*s. or under.*

For the pawn-ticket : $\frac{1}{2}d.$

For profit on each 2*s.* or fractional part of 2*s.* for not more than 1 calendar month . . . } $\frac{1}{2}d.$

And so on at the same rate per calendar month.

Half-months.—After the first month any time not exceeding 14 days may be charged as half a month, and any time exceeding 14 days and not exceeding 1 month will be charged as 1 month.

Redemption of Pledge.—A pledge pawned for 10*s.* or under, if not redeemed within 12 calendar months and 7 days, will become the property of the pawnbroker.

For Loans above 10*s. and not exceeding* £2.

For the pawn-ticket : 1*d.*

For profit on each 2*s.* or fractional part of 2*s.* for not exceeding 1 calendar month . . . } $\frac{1}{2}d.$

And so on at the same rate per calendar month.

Half-months are chargeable in the same manner as on loans not exceeding 10*s.*

Redemption of Pledge.—If the pledge pawned for 10*s.* or upwards be not redeemed within 12 calendar months and 7

(*a*) *Burslem* v. *Attenborough*, 28 L. J., 115.

(*b*) Stealing a pawn-ticket is larceny, 28 L. J., 210 ; *Levy & Company* v. *Clarke*, 14 L. J. Notes, 158.

days from the date of pledge, it may be sold by auction; but it may be redeemed at any time before the day of sale.

For Loans exceeding £2 and not exceeding £10.

For the pawn-ticket: 1*d.*

For profit on each 2*s.* 6*d.* or fractional part of 2*s.* 6*d.* for every calendar month or part of a calendar month . . . . . } ½*d.*

The conditions as to redeeming the pledge, selling by auction, and claim to surplus (see *post*) are the same as in loans above 10s. and not exceeding £2.

Inspection of Pawnbroker's Books as to Surplus of Sale.

Within 3 years after sale the pawner or holder of the pawn-ticket for a pledge exceeding 10*s.* may inspect the account of the sale in the pawnbroker's books, or the filled-in catalogue of the auction (which the statute requires shall be signed by the auctioneer), on payment of 1*d.*, and the pawnbroker must on demand pay the surplus, if any, produced by the sale, to the holder of the pawn-ticket. But the *deficiency* made on the sale of any pledge by the same pledger within 12 months before or after such surplus is obtained may be set off by the pawnbroker against such surplus (§ 22, and 3rd schedule).

Loans on Special Contract.

Notwithstanding the above provisions as to rates of profit on loans, a pawnbroker may make a *special contract* with the pawner where the loan exceeds £2, in which case the interest will be such as may be agreed on between the parties. But the pawnbroker must at the time of the pawning deliver to the pawner a special pawn-ticket, specifying the rate of profit charged (according to form No. 7 in the 3rd schedule to the Act), signed by the pawnbroker, and a duplicate thereof must be signed by the pawner (§ 15, and 3rd schedule).

Receipts on Redemption of Pledges.

A pawnbroker shall, if required, at the time of redemption give a receipt for the amount of loan and profit paid to him, and such receipt will not be liable to stamp duty unless the profit amounts to £2 or more (§ 15).

Regulations as to Auctions of Pledges above 10*s.*

The regulations as to auction sales of pledges over 10*s.* are fixed by the 5th schedule to the Act, and are as follow:—

1. The auctioneer shall cause all pledges to be exposed to public view.

2. He shall publish catalogues of the pledges, stating—

(1) The pawnbroker's name and place of business.

(2) The month in which each pledge was pawned.

(3) The number of each pledge as entered at the time of pawning in the pledge book.

3. The pledges of one pawnbroker in the catalogue shall be separate from any pledges of another pawnbroker.

4. The auctioneer shall insert in some public newspaper an advertisement giving notice of the sale, and stating—

(*a*) The pawnbroker's name and place of business.

(*b*) The months in which the pledges were pawned.

5. The advertisement shall be inserted on two several days in the same newspaper, and the second advertisement shall be inserted at least three clear days before the first day of sale.

6. Pictures, prints, books, bronzes, statues, busts, carvings in ivory and marble, cameos, intaglios, musical, mathematical, and philosophic instruments, and china, sold by auction, shall be sold by themselves, and without any other goods being sold at the same sale, four times only in every year (that is to say), on the first Monday in the months of January, April, July, and October, and on the following day and days if the sale exceeds one day, and at no other time.

7. Where a pawnbroker bids at a sale, the auctioneer shall not take the bidding in any other form than that in which he takes the biddings of other persons at the same sale; and the auctioneer, on knocking down any article to a pawnbroker, shall forthwith declare audibly the name of the pawnbroker as purchaser.

8. The auctioneer shall within 14 days after the sale deliver to the pawnbroker a copy of the catalogue, or of so much thereof as relates to the pledges of that pawnbroker, filled up with the amounts for which the several pledges of that pawnbroker were sold, and authenticated by the signature of the auctioneer.

9. The pawnbroker shall preserve every such catalogue for three years at least after the auction.

Offences by Persons Pawning Goods.

If any person knowingly and designedly, without the authority of the owner, pawn anything the property of another person, he will be liable on conviction to forfeit a sum not exceeding £5, and in addition thereto any sum not exceed

ing the value of the pledge, and the forfeitures may be applied in making satisfaction to the parties injured, and in defraying costs of prosecution, and the surplus to be paid to the overseers of the parish in which the offence was committed, in aid of the Poor Rate (§ 33) (*a*).

Any person doing any of the following things will be guilty of an offence against the Act, viz. :—

1. Offering to a pawnbroker an article by way of pawn being unable or refusing to give a satisfactory account of the means by which he became possessed of it.

2. Wilfully giving false information to a pawnbroker as to whether an article offered by him in pawn to the pawnbroker is his own property or not, or as to his name and address, or as to the name and address of the owner of the article.

3. Not being entitled to redeem a pledge attempts or endeavours to do so.

In every such case, and also in any case where, on an article being offered in pawn to a pawnbroker, he reasonably suspects that it has been stolen or otherwise illegally or clandestinely obtained, the pawnbroker may seize and detain the person and the article, or either of them, and deliver them into the custody of a constable, who must, as soon as may be, take such person before a Justice to be dealt with according to law, and may order the expenses of such seizure and detention to be paid as in a case of stealing (§ 34).

Offences by Pawnbrokers.

As to pledges for loans above 10*s.*, if not redeemed within 1 year and 7 days, a pawnbroker must *bonâ fide* sell the pledge by auction according to directions contained in the Act ; and he must not enter in his book a pledge as sold for less than the sum for which it was sold ; he must not refuse to permit the pawner or holder of the pawn-ticket to inspect such entry in his book or in the catalogue of the auction, signed by the auctioneer ; and he must not refuse to pay, on lawful demand, the surplus arising from the sale of the pledge.

Upon conviction of any of the above offences, the pawnbroker will be liable to forfeit to the person aggrieved a sum not exceeding £10 (§ 23).

A pawnbroker must not do any of the following things, or he will be guilty of an offence against the Act :—

(*a*) *R.* v. *Petheon*, 9 C. & P., 552; *R.* v. *Morland*, 5 Cox, C. C., 292.

1. Take any article in pawn from any person under the age of 12 years, nor from any person who is intoxicated.

2. Purchase or take in pawn or exchange a pawn-ticket issued by another pawnbroker.

3. Employ any servant or apprentice or other person under 16 to take pledges in pawn.

4. Carry on his business on Sunday, Good Friday, or Christmas Day, or day appointed for public fast or thanksgiving.

5. Under any pretence purchase, except at public auction, any pledge while in pawn with him.

6. Suffer any pledge while in pawn with him to be redeemed with a view to his purchasing it.

7. Make any contract or agreement with any person pawning, or offering to pawn any article, or with the owner thereof for the purchase, sale, or disposition thereof within the time of redemption.

8. Sell or dispose of any pledge pawned with him except at such time and in such manner as authorised by the Act (§ 32).

Where Apparel or Unfinished Goods Taken in Pawn.

If a pawnbroker knowingly takes in pawn any linen, or apparel, or unfinished goods, or materials entrusted to any person to wash, scour, iron, mend, manufacture, work up, finish, or make up, he will be liable on conviction to forfeit double the amount of the loan, and to restore the goods to the owner (§ 35).

Where Stolen Goods Taken in Pawn.

If any person is convicted, summarily or otherwise, of unlawfully pawning, or of stealing or obtaining by fraud any goods which have been pledged, the Court convicting the thief may order the restoration of the goods by the pawnbroker to the owner, either on payment of the whole or part of the loan, or without payment, according to the conduct of the owner or pawnbroker in the matter (§ 30).

A warrant may be granted to search a pawnbroker's premises for goods supposed to be in his possession, having been entrusted by the owner to some person who has unlawfully pawned them, and if found, an order may be made upon the pawnbroker to deliver up the goods (§ 36).

Penalties under the Act.

Any person convicted of an offence against the Act for which no other punishment is expressly provided will be liable to pay a penalty not exceeding £10 and costs, recoverable in the manner provided by the Summary Jurisdiction Acts.

SECTION XIII.—ILLEGAL DETENTION OF GOODS.

Action for Recovery of Goods.

An Action at law may be brought for the specific recovery of personal chattels wrongfully detained from the person entitled to the possession of them, and also for damages occasioned by the wrongful detention. To support such an Action, the Plaintiff must have the right to the immediate possession of the goods at the time of commencing the Action: an interest in reversion is not sufficient. And the goods must be sufficiently distinguishable (*a*).

The Action may be brought for the recovery of title deeds wrongfully withheld (*b*)

If, by reason of the unlawful detention of goods, the owner has been prevented from fulfilling a contract, or reaping the benefit of a bargain, he is entitled to compensation from the party detaining the goods (*c*).

Where a carpenter's tools are detained, and the carpenter, by reason thereof, loses a valuable job, or is unable to earn his customary wages, damages far beyond the value of the tools may be recovered in this Action (*d*).

If a person unlawfully detains the horse of another, and the owner is thereby obliged to hire another horse, the party detaining will be responsible for the amount expended in the hire of another horse.

If a chattel of any kind is detained under a claim of *lien* against the owner, and charges are incurred in keeping and taking care of it, no claim can be made against the owner in respect of such charges (*e*).

The Defendant cannot excuse himself by reason of his having lost the possession by his own wrongful act, as where he, having had possession of the Plaintiff's goods, wrongfully sold or lost them (*f*).

Action for Conversion of Goods (Trover).

A conversion of goods or chattels is a wrongful interference with them, as by taking, using, or destroying them, against or inconsistent with the owner's rights of possession. To constitute this injury there must be some repudiation of the

(*a*) 3 Black. Comm., 151, 152.
(*b*) *Plant* v. *Cotterill*, 29 L. J. Ex., 198.
(*c*) *Barrow* v. *Arnaud*, 8 Q. B., 610.
(*d*) *Bodley* v. *Reynolds*, 8 Q. B., 779.
(*e*) *Somes* v. *British Empire Shipping Co.*, 30 L. J. Q. B., 229.
(*f*) *Jones* v. *Bowle*, 9 M. & W., 19; *Reeve* v. *Palmer*, 28 L. J. C. P., 168.

owner's right by the Defendant, or some exercise of dominion inconsistent with it (*a*); and the Plaintiff must have the right to the immediate possession of the goods (*b*).

If the conversion cannot be proved in direct terms, it may be inferred from proof of demand and refusal to deliver (*c*).

The action for conversion can only be brought in respect of specific personal property; it will not lie for money, though certain in amount, unless it be identified *in specie* (*d*).

The damages recoverable in such an Action are not necessarily the value of the goods, but compensation for the loss actually sustained (*e*). But in an Action against a stranger for wrongful conversion, the Plaintiff is entitled to recover the full value of the goods (*f*).

Trover of Goods previously Stolen.

Curious questions arise on actions of trover. Thus, some negotiable instruments which had been stolen from a bank, and afterwards recovered by fraudulent means from a *bonâ fide* holder for value, were thereupon returned by the thief to the bank; and the question then arose between such *bonâ fide* holder and the bank whether the bank was, in these circumstances, a holder for value. The Court of Appeal held that it was, as it was to be presumed (in the absence of evidence to the contrary) that the bank had accepted the securities in discharge of the thief's obligation to restore them, and the abandonment of a right of action was a valuable consideration (*g*).

Jurisdiction of Magistrates.

Metropolitan Police Magistrates have a summary jurisdiction to order the delivery up of goods or articles unlawfully detained, and to adjudicate as to liens upon them, where the value of the goods is not greater than £15 (2 & 3 Vict. c. 71, § 40.) Refusal by a Magistrate to make an order is no bar to an Action for the goods (*h*).

(*a*) *Fouldes* v. *Willoughby*, 8 M. & W., 540; *Burroughes* v. *Bayne*, 29 L. J. Ex., 185.
(*b*) *Bradley* v. *Copley*, 1 C. B., 685.
(*c*) *Philpott* v. *Kelly*, 2 A & E., 106.
(*d*) *Orton* v. *Butler*, 5 B. & Ald., 652.
(*e*) *Chinnery* v. *Viall*, 29 L. J. Ex., 180.
(*f*) *Turner* v. *Hardcastle*, 31 L. J. C. P., 193.
(*g*) *London and County Bank* v. *London and River Plate Bank*, 21 Q.B.D., 535.
(*h*) *Dover* v. *Child*, 1 L. R. Ex. D., 172.

SECTION XIV.—CARRIAGE OF PASSENGERS AND GOODS.

Common Carriers.

Every person who plies with a carriage by land, or a vessel by water, between different places, and professes openly to carry passengers and goods for hire, is a "common carrier." Such are railway and steam-boat companies; omnibus, cab, stage coach and waggon proprietors; lightermen, hoymen, barge owners, canal boatmen, and the owners and masters of ships and steam-boats trading from port to port, for the transportation of all persons offering themselves or their goods to be conveyed for hire to any port or place (*a*).

Carriers of Passengers.

It is the duty of carriers of passengers to carry all passengers who offer themselves in a fit and proper state to be carried, provided the carrier has proper convenience for carrying them, and the passengers are ready and willing to pay the proper and reasonable fare. But carriers of passengers do not insure the safety of passengers, and are only responsible for injuries caused by negligence (*b*).

And it will be negligence, though an official be acting within the scope of his authority, if in so acting he makes a mistake whereby injury results to a passenger (*c*).

Carriers of passengers for hire are bound to exercise the greatest care and forethought for securing the safety of their passengers; and such carriers are answerable for any negligence, however slight, on their own part or that of their servants; but not for unforeseen accidents, which care and vigilance could not have avoided.

If, through the default of a coach proprietor, in neglecting to provide proper means of conveyance, a passenger be placed in so perilous a situation as to render it prudent for him to leap from the coach, whereby his leg is broken, the proprietor will be responsible in damages, although the coach was not actually overturned (*d*). But where a railway passenger, in attempting to fasten the door of the carriage whilst the train

(*a*) Bac. Abr., Carriers, A.; *Laveroni* v. *Drury*, 8 Ex., 166; *Couch* v. *L*, & *N. W. R. Co.*, 23 L. J. C. P., 73.

(*b*) *Birkett* v. *Whitehaven Junction Railway Company*, 4 H. & N. 730, 734.

(*c*) *Bayley* v. *Manchester, Sheffield, and Lincolnshire Railway Company*, L. R. 8 C. P., 148.

(*d*) *Jones* v. *Boyce*, 1 Stark., 498.

was in motion, which the company's servants had omitted to fasten, fell out and was injured, it was held that the company were not liable to make compensation to the injured passenger (*a*).

The Plaintiff, a passenger on the Defendants' railway, suffered an injury in consequence of the carriage getting off the line. The accident was caused by the breaking of the tire of one of the wheels, owing to a latent defect in the tire, which was not attributable to any fault on the part of the manufacturer, and could not be detected previously to the breaking: it was held that the company were not liable for such an injury, there being no contract of warranty and insurance in the case of passengers that the carriage should be in all respects perfect for its purpose, *i.e.*, free from all defects likely to cause peril (*b*).

Railway companies are bound to use reasonable efforts for the arrival of trains at the time specified in their time-tables; they are not liable for delays of a few minutes, but a long and unusual delay is, in general, a breach of contract with the passenger, for which the company is liable.

The damages to which a passenger is entitled in an Action against a railway company, or other carrier, for delay, are the expenses actually resulting from the delay, such as for lodging and conveyance: but damages for loss of business occasioned in consequence of not reaching the destination at the proper time are not recoverable (*c*).

If railways are impeded by snow, the company must use all reasonable exertions to forward their passengers and clear the line for traffic (*d*).

In a case carried by a passenger to the House of Lords, a Plaintiff claimed damages for loss by robbery in the Defendant's train on the grounds, first, that the station-master at the station where the robbery had occurred refused to detain the train to enable him to recover the money and arrest the thieves; and secondly, that the robbery was directly due to overcrowding. It was pronounced that, under the circumstances, there was no duty cast on the station-master to detain the train, and therefore no cause of Action was shown, and that the damage was too remote for a cause of Action (*e*).

(*a*) *Adams* v. *L. & Y. R. Co.*, 38 L. J. C. P., 277.
(*b*) *Readhead* v. *M. R. Co.*, 38 L. J. Q. B., 169.
(*c*) *Hamlin* v. *G. N. R. Co.*, 26 L. J. Ex., 20.
(*d*) *Briddon* v. *G. N. R. Co.*, 28 L. J. Ex., 51.
(*e*) *Cobb* v. *Great Western Railway Co.*, C. A. [1893] 1 Q. B. 459; H. L. (E.) [1894] W. N. 98.

Passengers' Luggage on Railways.

Although railway companies are not insurers of a passenger's luggage which, at his request, is placed in the same compartment in which he travels, they are liable for loss or injury caused to it by the negligence of their servants.

They are liable, notwithstanding any notice issued by them to the contrary; and such liability extends to the carriage by water by railway companies working steamboats: and therefore, where a passenger took a ticket at Boulogne to travel by the South-Eastern Railway Company's steamboat to Folkestone, and from thence to London, and whilst her luggage was being transferred by the company's servants from boat to train at Folkestone, it was dropped into the sea, and the contents damaged by sea-water to the amount of £73; it was held that the railway company were liable to the Plaintiff for the damage (*a*).

If a passenger pack merchandise in carpet-bags and portmanteaus, and pass it off as luggage, he cannot recover damages for the loss of it, as he is guilty of an unfair concealment towards the company (*b*).

Railway companies are responsible for the acts and omissions of their porters, if acting within the scope of their authority, in the management and delivery of passengers' luggage. Where a Plaintiff, an intending passenger by railway, had reached the departure station in a cab about half an hour too early, her luggage was taken from the cab by a porter, who directed her to get a ticket while he labelled the luggage, saying that the booking-office would be open in a few minutes. In about two minutes the office was opened, and the Plaintiff took her ticket, but when she got to the platform one of the articles taken from the cab by the porter was missing. The Company had posted notices in their stations that their servants were forbidden to take charge of any articles; that any article which a passenger wished to leave at a station should be deposited in the cloak-room; and that they would not be responsible for any article left on their premises in any other manner. It was held, however, that such notice did not apply to this case, where the luggage had been taken charge of by the porter, and was not given to him to be left at the station for the passenger's convenience. The luggage having been received by him within the scope of his authority, delivery to him was delivery to the

(*a*) *Cohen* v. *S. E. R. Co.*, 46 L. J. C. P. D., 417.
(*b*) *G. N. R. Company* v. *Shepherd*, 21 L. J. Ex., 114.

Company as carriers; and as such they were liable for the loss (*a*).

A passenger gave her luggage into the charge of a porter; some of it was to be labelled for the van, but a bag was to accompany her in the carriage. On asking the porter to take care of the luggage while she obtained her ticket he agreed to do so. Within 10 minutes the bag was missing. It was held that the Company through its porter contracted to keep the luggage safe during transit, and that there was evidence of negligence, and therefore of liability for the value of the missing article (*b*).

Where a lady's servant held as passenger a railway ticket paid for with his mistress's money, and took with him luggage containing his mistress's clothes, and the luggage was destroyed by an accident to the train, it was ruled by the Judge, on an action by the mistress, that the company were not liable, having contracted to carry only the passenger's own luggage; but it was held by the Court of Appeal that the mistress could recover damages, though the action would not be in contract but in tort (*c*).

Common Carriers Act.

The Carriers Act (11 Geo. IV. & 1 Wm. IV., c. 68, now amended by 28 & 29 Vict. c. 94) exempts common carriers from liability for the loss of valuable articles exceeding £10, unless, at the time of delivery, the value and nature of the articles have been declared by the person sending or delivering the same, and the increased charge accepted by the carrier.

The following are the articles enumerated in the Act, the value and nature of which, if valued at more than £10, are to be declared by the sender:—"Gold or silver coins of this realm, or of any foreign state, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewellery, watches, clocks, or time-pieces of any description, trinkets, bills, notes of the Governor and Company of the Banks of England, Scotland, and Ireland respectively, or of any other bank in Great Britain or Ireland, orders, notes or securities for payment of money, English or foreign stamps, maps, writings, title-deeds, paintings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks in a manufactured or unmanufactured state, and whether wrought up or

(*a*) *Richards* v. *L. B. & S. C. R. Company*, 7 C. B., 839.
(*b*) *G. W. R. Company* v. *Bunch*, 52 J. P., 147.
(*c*) *Meux* v. *G. E. R. Company*, C. A. (1895), 2 Q. B. 387, overruling Mathew, J.

not wrought up with other materials, furs, or lace [not being machine-made lace], or any of them, contained in any parcel or package which shall have been delivered, either to be carried for hire, or to accompany the person of any passenger in any mail or stage-coach or other public conveyance."

Where goods of the description mentioned in the Act are delivered to a carrier, and their nature and value declared, it lies upon the carrier to demand the increased charge, and if no such demand be made, the carrier will be liable for loss or injury to the goods although the increased charge has not been tendered or paid (*a*).

Where the value is not declared, as in the case of a picture or piece of valuable work in a frame, although the value of such picture or piece of work cannot be recovered, yet the Plaintiff may recover for the gilt frame and packing case (*b*).

Wrongful Detention of Goods, and Overcharges by Carriers.

If a carrier wrongfully detain goods after the proper charges for freight or carriage (as the case may be) have been tendered to him, he is liable to an Action at law for damages for such wrongful detention. If the carrier make an overcharge and refuse to give up the goods except on payment thereof, the overcharge may be paid *under protest*, and such overcharge can be then recovered in an Action in a County Court, against the carrier, for money wrongfully received (*c*).

Charges must be Fair and without Undue Preference.

A railway company or carrier must not make unreasonable charges, nor carry goods at a lower rate for one customer than another (*d*): nor give undue preference to any particular person or description of traffic (*e*).

Carriage of Goods over different Lines.

If a railway company accepts goods for conveyance to a particular destination, beyond the limits of its own line of railroad, and the goods are lost whilst in the hands of another railway company, to whom they have been delivered to be forwarded on their journey, the first company is responsible for the loss, as being the party contracting with the consignor or consignee for the conveyance of them; and a proviso in

(*a*) *Behrens* v. *G. N. R. Company*, 31 L. J. Ex., 299.
(*b*) *Treadwin* v. *G. E. R. Co.*, 37 L. J. C. P., 83.
(*c*) *Pegler* v. *Monmouth R. Co.*, 6 H. & N., 644.
(*d*) *Baxendale* v. *E. C. R. Co.*, 27 L. J. C. P., 145.
(*e*) 17 & 18 Vict. c. 31, §§ 2, 3, and 6; *In re Ransome*, 1 C. B. (N. S.), 437; 4 C. B. (N. S.), 165; *In re Oxlade*, 15 C. B. (N. S.), 680.

the contract exonerating the company from all liability in respect of loss of, or damage to, the goods occurring beyond the limits of its own railway is void (*a*).

Railway Company as Warehousemen.

A railway company, as carriers, brought some goods by their railway to one of their stations, and immediately gave the consignee notice of the arrival, and that they held the goods, "not as common carriers, but as warehousemen, at owner's sole risk, and subject to the usual warehouse charges." The consignee acquiesced in this, and the goods remained in the charge of the company, and, by their negligence, were damaged. In an Action by the consignee against the company, it was held that, on the true construction of the notice, the Defendants were not exempted from all liability, but were bound as bailees to take reasonable care of the goods (*b*).

Furniture Removers.

Persons who, for hire or reward, undertake the removal of furniture or other goods from one house to another, or from place to place, are, in general, subject to the same liability as common carriers, and are therefore liable for all breakages or injury to such furniture or other goods in the course of such removal: and it is probable that they are also *primâ facie* liable for thefts committed by their own servants or others (*c*). But if a special contract be entered into by both parties, limiting the risk, the remover may be relieved from liability (*d*).

Sending or Depositing Dangerous Goods.

It is an offence to send dangerous goods, such as aqua-fortis, oil of vitriol, gunpowder, lucifer matches, &c., without distinctly marking their nature on the outside, or otherwise giving notice in writing to the book-keeper or railway servant. Penalty, not exceeding £20. (8 & 9 Vict. c. 20, § 105.)

Any person who conceals, in boxes or packages, articles of an explosive, corrosive, or combustible and dangerous nature, and delivers them to be warehoused or carried with other goods, by land or sea, and fails to disclose the dangerous properties of the goods, will be guilty of a tortious act, and held responsible for the consequences of his carelessness (*e*).

(*a*) *Garnett* v. *Willan*, 5 B. & Ald., 53; *Bristol and Exeter Railway Company* v. *Collins*, 7 L. R. H. L. Cas., 194.

(*b*) *Mitchell* v. *L. & Y. R. Co.*, 44 L. J. Q. B., 107.

(*c*) See *Coggs* v. *Bernard*, 1 Smith, L. C. (9th ed.), 201, as to this.

(*d*) *Scaife* v. *Tarrant*, 44 L. J. Ex., 36 and 234.

(*e*) *Hutchinson* v. *Guion*, 28 L. J. C. P., 63; *Farrant* v. *Barnes*, 31 L. J., C. P., 139.

Carriage of Goods by Water.

In the absence of any express contract, carriers of goods by water are subject to the same duties and liabilities as carriers of goods by land; although the place of destination is beyond the seas and out of the realm (*a*).

When a party has agreed to carry cargoes or merchandise from one place to another, he has impliedly contracted to carry them safely, and will be liable to make good any loss or damage occasioned by casualty or accident (unless the same occur by act of God, a peril of the sea or of navigation, or the act of the Queen's enemies) (*b*).

Carriers by water are liable for damages and losses occasioned by their own negligence and misconduct, or want of skill; or the negligence, misconduct, or want of skill of the persons they intrust with their vessels (*c*).

London Cab Act, 1896.

By this Act (59 & 60 Vict. c. 27)—passed for the suppression of the too common practice of "bilking" the London cabmen—it is provided that if any person (i) hires a cab plying within the Metropolitan Police District, knowing that he cannot pay, or with intent to avoid payment of, the lawful fare; or (ii) fraudulently endeavours to avoid payment of a fare lawfully due from him; or (iii) having failed or refused to pay, either refuses to give to the driver an address at which he can be found, or gives a false address, he shall be liable on summary conviction to pay, in addition to the fare, a fine not exceeding 40*s*., or to be imprisoned for a term not exceeding fourteen days. The whole or any part of any fine imposed may be applied in compensation to the driver.

Advertisements in Omnibuses and Cabs.

As regards vehicles plying in London, it is expressly enacted that it shall not be lawful for the proprietor of any metropolitan stage or hackney carriage to suffer any notice, advertisement, or printed bill, or any names, letters, or numbers, to appear upon the outside of any such carriage in such manner as to obstruct the light or ventilation, or on the inside of any such carriage in such position that any such notice, advertisement, or printed bill shall obstruct the light or ventilation, or cause annoyance to any passenger. (16 & 17 Vict. c. 33, § 15.)

(*a*) *Bennett* v. *P. & O. Co.*, 6 C. B., 775.
(*b*) *Rogers* v. *Head*, Cro. Jac., 262; *Spence* v. *Chadwick*, 10 Q. B., 517.
(*c*) 1 Doug., 278; *Siordet* v. *Hall*, 1 M. & P., 561.

SECTION XV.—WEIGHTS AND MEASURES.

Weights and Measures Acts, 1878 *and* 1889.

By the Act of 1878 (41 & 42 Vict. c. 49), it was provided that every contract, bargain, sale, or dealing, for any work done, goods, wares, or merchandise sold, carried, or agreed for, by weight or measure, should be according to the imperial weights or measures, and if not so made, should be void; no local or customary measures, nor the use of the heaped measure, should be lawful; and all tolls and duties charged and collected according to weight or measure were likewise to be according to the imperial weights or measures (§ 19). [But see now under Act of 1897, next page.]

Under the Act of 1878, also, all articles sold by weight are to be sold by avoirdupois weight; except that the precious metals and stones may be sold by the oz. troy; and drugs, when sold by retail, may be sold by apothecaries' weight (§ 20).

But a contract or dealing shall not be invalid or open to objection on the ground that the weights or measures expressed or referred to are of the metric system, or on the ground that decimal subdivisions of imperial weights and measures, whether metric or otherwise, are used (§ 21).

A table of the equivalents of metric weights and measures in terms of imperial weights and measures is given in a Schedule to the Act (§ 19).

Nothing in that Act is to prevent, or subject a person to a fine for, the sale of an article in any vessel not represented as containing any amount of imperial measure (§ 22).

Every person who uses for trade a weight or measure not of the standard denomination, or which is false or unjust, or not duly stamped with the denomination thereof, is liable to a fine of £5 for the first offence, and £20 for the second, in addition to imprisonment if fraud be proved. (41 & 42 Vict. c. 49, §§ 24—26; 52 & 53 Vict. c. 21, §§ 3, 4.)

And any person who wilfully or knowingly makes or sells, or causes to be made or sold, any false or unjust weight, measure, or balance, will be liable to a fine of £10, or for a second offence £50. (41 & 42 Vict. c. 49, § 27.)

By an Act of 1889 (52 & 53 Vict. c. 21) it was provided that every weighing instrument used for trade should be verified and stamped by an Inspector of Weights and Measures; and that every person who, after 12 months from January 1st, 1890, uses for trade a weighing instrument not so stamped shall be liable to a fine of 40*s*., or on a second offence £5, in addition to imprisonment if fraud be proved.

Weights and Measures (Metric System) Act, 1897.

By this Act (60 & 61 Vict. c. 46), however, it is now provided that notwithstanding anything in the Weights and Measures Act, 1878, the use in trade of a weight or measure of the metric system shall be lawful, and nothing in § 19 of that Act shall make void any contract, bargain, sale, or dealing, by reason only of its being made or had according to weights or measures of the metric system; and a person using or having in his possession a weight or measure of the metric system shall not by reason thereof be liable to any fine.

Measurement of Land.

By 5 Geo. IV. c. 74, it was enacted that on and after May 1st, 1825, the standard yard was to be the unit of measurement, and all measurements, lineal and superficial, were to be multiples or sub-multiples thereof, the acre to contain 160 perches or 4,840 square yards. Since that date these measures have gradually superseded the old "local" measures, some of which are, however, occasionally met with.

Sale of Coal.

The same Act provided that all coal shall be sold by weight only, except where, by desire of the purchaser, it is sold by boatload, or by waggons or tubs direct from a colliery; and that if any person sell coal otherwise than is here required, he shall be liable to a fine not exceeding £5 for every such sale. (52 & 53 Vict. c. 21, § 20.)

And where more than two hundredweight of coal is delivered by vehicle to a purchaser, the seller is to deliver, or to send by post, to the purchaser, before any part of the coal is unloaded, a ticket or note in the form prescribed by the Act. Penalty for default, £5 (§ 21).

Local authorities may provide public weighing instruments for weighing coal, and make by-laws regulating the sale of coal in quantities of less than two hundredweight (§§ 26, 28).

All coals, slack, culm, and cannel must be sold by weight, and not by measure. (41 & 42 Vict. c. 49, § 19.)

If any of the requirements of these statutes are not complied with, the seller will be liable to penalties; and he cannot sue the buyer for the price of the coals (*a*).

A weighing by putting the sacks of coal successively in one scale of the weighing-machine against weights in the other

(*a*) *Little* v. *Poole*, 9 B. & C., 200; *Cundell* v. *Dawson*, 4 C. B., 376; *Tyson* v. *Thomas*, McCl. & Y., 119.

scale equal to the weight each sack should contain and an empty sack, is a fraudulent weighing (*a*).

Sale of Bread and Flour.

Bread may be made of any weight or size, but must be sold by avoirdupois weight only, French rolls and fancy bread excepted. Penalty on bakers using false weights, £5. (3 Geo. IV. c. 106; 6 & 7 Will. IV. c. 37.)

Bread must be sold by its weight after being baked; and it is no excuse that the dough was weighed and allowance made for shrinkage. It must be weighed in the presence of the purchaser, if he so require; but whether he require it to be weighed or not, if it be afterwards discovered to be of short weight the baker may be convicted under the statute (*b*).

All bakers and sellers of bread who send bread out in carts are required to carry with them, constantly in such carts, correct and proper weights and scales, and to weigh such bread when requested in the presence of the purchaser, under penalty of £5. (6 & 7 Will. IV. c. 37, § 7.) (*c*)

Aërated bread, baked in tins, and called fancy bread, must be of the proper weight of quartern and half-quartern loaves; and where a person was convicted of selling such bread from a van without having proper scales and weights, the conviction was affirmed on appeal (*d*).

Bakers making or selling, or exposing for sale, bread made wholly or partially of peas, or beans, or potatoes, or of any other sort of corn or grain other than wheat, without being marked with a large Roman M (meaning *Meal*), are to forfeit for every pound weight of such bread 10*s*., or 1 month's imprisonment.

Bakers mixing improper ingredients in making bread are liable to a penalty not exceeding £10, nor less than £5, or 6 months' imprisonment, and the names of the offenders are to be published in the newspapers. (6 & 7 Will. IV. c. 37.)

Penalties are also incurred for adulterating flour: and by any miller, mealman, or baker, having in his possession, or on his premises, any ingredient for adulterating bread, flour, or meal, or wilfully obstructing any person in searching his premises for such. (6 & 7 Will. IV. c. 37, §§ 10, 11, 12.)

(*a*) *Meredith* v. *Holman*, 16 M. & W., 798.
(*b*) *Williams* v. *Deggan*, 16 L. T. (N. S.), 492.
(*c*) And see *Robinson* v. *Cliff*, 45 L. J. M. C., 109.
(*d*) *Aërated Bread Co.* v. *Grigg*, 42 L. J. M. C., 117.

PART VI.

COPYRIGHT, PATENTS, AND TRADE MARKS.

SECTION I.—COPYRIGHT.

COPYRIGHT, in regard to books, is the exclusive privilege of selling, printing and reprinting, publishing and republishing, particular works of literature. Copyright extends also to musical compositions, dramatic productions, and works of art. All copyright is personal property, and transmissible as such.

The term of an author's copyright was first limited by a Statute of Anne (8 Anne, c. 19), but the present law is based on the Copyright Act of 1842 (5 & 6 Vict. c. 45). By this Statute it was enacted that the copyright of every volume, part or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan, separately published in the lifetime of its author, shall endure for his natural life and for seven years after his death; but if the seven years expire before the end of 42 years from the first publication, the copyright is to last for such period of 42 years from the first publication, and shall be the property of such author and his assigns. If the book is published after the author's death, the copyright is to endure for 42 years from the first publication, and shall belong to the proprietor of the author's manuscript (§§ 2, 3).

The copyright in articles in any encyclopædia, review, magazine, periodical work, or work published in parts, shall belong to the proprietor of the work for the same term as given to the authors of books, when they have been composed on the terms that the copyright shall belong to such proprietor and have been paid for by him, except that after 28 years from first publication the right of publishing the articles in separate form shall revert to the author for the remainder of the term given by the Act; and during such 28 years the proprietor of the work shall not publish the articles separately without the previous consent of the author or his assigns (§ 18).

The proprietor of the copyright in an encyclopædia, review,

magazine, periodical work, or work published in parts, secures the benefits of registration for the whole work upon his registering the first volume, number, or part (§ 19).

Various Descriptions of Copyright.

Copyright may be subdivided as under :—

Literary Copyright, under which the owner has the exclusive right of multiplying copies of printed works, and of publishing the same (*a*), if first published in the British dominions.

Dramatic Copyright, which gives the owner the exclusive right to its performance and representation on the same condition.

Musical Copyright, which gives the owner the exclusive right of public representation of a performance.

Lecture Copyright, which entitles the owner to the sole right of delivery and publication. (A lecture printed and published is protected as a literary copyright.)

To secure lecture copyright, it is necessary for the owner to give notice in writing, *every time the lecture is delivered*, to two Justices of the Peace living within five miles of the place of delivery two days at least before its delivery (5 & 6 Will. IV. c. 65, § 5) ; and it is safer to give notice also when delivering the lecture that publication is prohibited.

The statute only prohibits a lecture being printed or published, not its re-delivery by another from recollection (*b*).

(*a*) What is popularly termed a question of "copyright" (though not arising under the Copyright Act, which relates to printed matter actually published : see *ante*, p. 301) is raised at times in regard to private letters, which the person to whom the letters were addressed, or some third party into whose hands they have passed, proposes to "publish" in disregard of the wishes of the writer, or (it may be, if he is deceased) of the writer's representatives.

In regard to private letters, it is settled law that the receiver has only "a joint property therein with the sender," with perhaps the exclusive ownership of the paper on which they are written. But this "does not give a licence to any person whatsoever to publish them to the world" (*per* Lord Hardwicke, in *Pope* v. *Curl*, 2 Atk. 342). And so where both writer and receiver were deceased, it was held that the receiver's widow had no right to print letters received by her husband, unless she had obtained the consent of the writer or of his executors (*per* Lord Apsley, in *Thompson* v. *Stanhope*, Amb. 737).

But the receiver or other holder of private letters will not be excused from producing them, when required, in a court of justice, even though the writer object (*Hopkinson* v. *Lord Burghley*, L. R. 2 Ch. Ap. 447).

The authorities on the questions here raised were reviewed by Mr. Justice North in the case of *Labouchere* v. *Hess and Sala* (reported in *Times* of Nov. 29th, 1897), in which the plaintiff obtained an injunction restraining the publication of certain letters addressed by him to the late Mr. G. A. Sala.

(*b*) Copinger on Copyright (Third ed.), 59.

Lecture copyright does not apply to lectures delivered in any university or public school or college, or in virtue of any gift or endowment. (5 & 6 Wm. IV. c. 65, § 5) (*a*).

Fine Art Copyright applies to original paintings, drawings, and photographs, but the maker must be a British subject or resident within the British dominions.

Engraving Copyright is conferred on all persons who shall engrave, etch, or work in mezzotints or chiaroscuro, or cause to be so executed, any picture, drawing, model, or sculpture, either ancient or modern, and includes prints taken by lithography or any other mechanical process, provided the name of the proprietor, and day, month, and year of publication be stated on every plate and on every copy of such print.

Sculpture Copyright is conferred on every person who makes or causes to be made any new or original sculpture or model or copy or cast of the human or animal figure, or any part thereof, provided the proprietor puts his name with the date of first publication on every such production before it is published.

Copyright in Designs is secured to designs duly registered under the Patents, Designs, and Trade Marks Act, 1883 (see p. 315).

Duration of Copyright.

Dramatic Copyright, either for original works or translations, lasts for the same term as *Literary Copyright* (see *ante*), namely, the life of the author and 7 years afterwards, or for 42 years whichever be the longer period. (5 & 6 Vict. c. 45, § 20.)

Musical Copyright likewise lasts for the same term. (*Ibid.*)

Fine Art Copyright lasts for the life of the artist and 7 years afterwards. (25 & 26 Vict. c. 68, § 1.)

(*a*) In the case of a university professor delivering orally in his class-room lectures of his own composition, admission to such lectures is given on an implied condition that the lectures, or any notes thereof taken by students, shall not be published; and by such delivery the lectures are not so communicated to the world as to entitle any one to republish them without permission (*Caird* v. *Sime*, H. L. 12 App. Cas. 326; and see also *Abernethy* v. *Hutchinson*, 1 H. & T. 28). So also (it has been held) in the case of a lecture to an audience admitted only by ticket; there being an implied contract with the audience preserving the lecturer's common law right (*Per* Kay, J., in *Nicols* v. *Pitman*, L. R. 28 Ch. D. 381).

It has been suggested that 5 & 6 Will. IV. c. 65 applies to sermons, but the statute in terms refers only to "lectures delivered upon divers subjects," without defining "lecture." It is doubtful, therefore, whether sermons were included, and there appears to have been no decision on the point. Moreover, "when a person preaches a sermon in a church, the doors of which are thrown open to all mankind, the sermon is 'published' without any limit of the right of recommunicating it to others." (*Per* Lord Halsbury, L.C., in *Caird* v. *Sime*, cited above.)

Engraving Copyright lasts for 28 years from the day of publication. (7 Geo. III. c. 38, § 7.)

Sculpture Copyright lasts for 14 years from publication, and if the artist be alive at the expiration of this term for a further term of 14 years. (54 Geo. III. c. 36, § 1.)

Copyright in Designs lasts for 5 years from the date of registration. (46 & 47 Vict. c. 47, § 50.)

Registration of Copyright.

Copyright in works of literature must be registered at Stationers' Hall before any action for its infringement can be maintained (5 & 6 Vict. c. 45, § 24); but non-registration does not affect the existence of the copyright.

The entry must be by the proprietor; and the work must have been actually published before the entry can be made (*a*). Where a publisher who was about to bring out a magazine entered the same at Stationers' Hall before publication, it was held that he had not acquired any copyright therein (*b*).

A newspaper is within the Copyright Act, and must be registered at Stationers' Hall to give the proprietor a right to sue in respect of the piracy of its contents (*c*).

Fine Art Copyrights should be registered at Stationers' Hall, as no action is sustainable for any infringement which occurs before registration. (25 & 26 Vict. c. 68, § 4.) It should be noted that the copyright of any painting, drawing, or negative of a photograph made for valuable consideration belongs to the person giving the consideration. Upon transferring the ownership of a painting the copyright should either be transferred or reserved (as the case may be, according to the intention of the parties), by agreement in writing, *or it will cease to exist.*

Dramatic Copyright, apart from printed publication, does not require registration.

Engravings and *Sculpture* need not be registered, but it has been held that maps require registration as literary works, and also engravings published together in book form.

Copyright in Designs is registered at the Patent Office.

Infringement of Copyright.

As to books unlawfully printed within the British dominions, the proprietor of the copyright may claim an Injunction against their publication and sale, and an order for inspection and account; and those reprinted out of the British dominions

(*a*) *Maxwell* v. *Hogg* and *Hogg* v. *Maxwell*, 36 L. J. Ch., 433.
(*b*) *Henderson* v. *Maxwell*, 40 L. J. Ch., 891.
(*c*) *Walter* v. *Howe*, 50 L. J. Ch., 621.

and imported into the United Kingdom may be seized as forfeited by any officer of Customs or Excise: the offenders are also liable to penalties. (5 & 6 Vict. c. 48, § 17.)

The damages which a Plaintiff is entitled to recover for a piracy of his literary work is the profit he would have made from the sale of so many additional copies; and the Defendant must account, therefore, for all copies he has sold (*a*).

Books piratically printed before registration of the copyright by the proprietor, become his property after registration (*b*).

Dramatising and representing a novel on the stage is not an infringement of the literary copyright in the novel (*c*). But where a portion of the drama, including the most striking incidents and much of the actual language, had been taken bodily from the novel, although it was in evidence that the profit on the publication of the drama had been almost inappreciable, a perpetual injunction was granted against the printing and publication of the drama (*d*).

And in a case where the Plaintiff wrote a drama and then turned it into a novel, and the Defendant, without knowing of the Plaintiff's drama, dramatised and represented the novel, it was held an infringement of the Plaintiff's dramatic copyright (*e*).

Where a Defendant had dramatised the novel of "Little Lord Fauntleroy," and for acting purposes had made in manuscript or type-writing three or four copies of the play containing "very considerable" passages extracted from the novel, a perpetual injunction was granted to restrain the Defendant from multiplying copies of his play containing any passages copied, taken, or colourably altered from the novel (*f*).

It had previously been decided that the printing or multiplying copies of a piece of music, not for sale, but for gratuitous distribution among the members of a musical society, is a violation of the right of property vested in the owner of the copyright in the piece (*g*).

Publication of Photographs.

When the negative of any photograph is made for or on behalf of another person for a good or valuable consideration,

(*a*) *Pike* v. *Nicholas*, 38 L. J. Ch., 529.
(*b*) *Isaacs* v. *Fiddemann*, 49 L. J. Ch. D., 412.
(*c*) *Reade* v. *Conquest*, 30 L. J. C. P., 209.
(*d*) *Tinsley* v. *Lacey*, Hem. & Mill., 747.
(*e*) *Reade* v. *Lacey*, 30 L. J. Ch., 655; *Reade* v. *Conquest*, 31 L. J. C. P., 153; 3 & 4 Wm. IV. c. 15; 5 & 6 Vict. c. 45, §§ 20, 21.
(*f*) *Warne* v. *Seebohm*, 4 *Times* L. R., 535.
(*g*) *Novello* v. *Sudlow*, 12 C. B., 177.

the person making the same shall not retain the copyright thereof, unless it is expressly reserved to him by agreement in writing signed by the person for or on whose behalf the same is so made or executed. (25 & 26 Vict. c. 68, § 1.)

A portrait taken on the terms that the photographer may sell copies, though without payment by the subject, is made for a "good and valuable consideration" within the Act; but where it is the intention of the parties that the negative shall be kept by the photographer as his own property, it is not made "for or on behalf of" the subject, and this provision of the Act does not apply (*a*).

Where a husband and wife brought an action against photographers to restrain them from issuing a Christmas card on which was displayed, without leave of the Plaintiffs, a photograph of the wife taken in the ordinary way of business, it was held in conformity with the Act that the copyright was in the Plaintiffs, although the negative had remained in the hands of the Defendants. It was held also that the fact that the copyright had not been registered did not deprive the Plaintiffs of their common-law right of action for breach of contract and breach of faith; and a perpetual injunction was granted against any unauthorised publication of the photograph (*b*).

Fraudulent Production or Sale of Works of Art.

1. No person shall fraudulently assign or otherwise affix to or upon any painting, drawing, or photograph, or the negative thereof, any name, initials, or monogram. 2. Nor fraudulently sell, publish, exhibit, or dispose of, or offer for sale, exhibition, or distribution, any painting, &c., having thereon the name, &c., of a person who did not execute or make such work. 3. Nor fraudulently utter, dispose of, or put off, any copy, or colourable imitation of any painting, &c., whether there be subsisting a copyright therein or not, as having been made by the author or maker of the original work from which such copy or imitation shall have been taken. 4. Where the author or maker of any painting, &c., shall have parted with the same, if any alteration shall afterwards be made therein by any person, the painting, &c., must not be sold or published as the work of such author. Penalties in the above cases: a sum not exceeding £10, and to forfeit all copies, &c. (25 & 26 Vict. c. 68, § 7).

(*a*) *Per* Kekewich J., *Melville* v. *Mirror of Life Co.* L. R. (1895), 2 Ch., 531.
(*b*) *Pollard* v. *Photographic Company*, L. R. (1888) 40 Ch. D., 347; 58 L. J. Ch., 293.

The importation into the United Kingdom of pirated copies, or imitations made abroad, of any painting, &c., wherein there is a copyright, is also prohibited, and there is an express saving of the right to bring an Action for damages, in addition to any other remedy. (§§ 10, 11.)

Musical Compositions.

The proprietor, or his assignee, of the copyright in any musical composition first published after August 10, 1882, who is desirous of reserving the right of public representation or performance of the same, must print upon the title-page of every copy thereof a notice to the effect that the right is reserved. (45 & 46 Vict. c. 40, § 1.)

As regards the recovery of penalties for the unauthorised performance of copyright musical compositions, the Copyright (Musical Compositions) Act, 1888, now provides that in any action for the unauthorised performance of a musical composition, the penalty and damages, as well as the costs, shall be such reasonable amount as the Court may award, instead of an arbitrary sum as heretofore. The occupier of a place of dramatic entertainment is not to be liable unless he has guilty knowledge. The Act does not apply to operas or stage plays. (51 & 52 Vict. c. 17.)

International Copyright.

This is now regulated by the "International Copyright Union," which has been joined by Great Britain and Ireland with all her Majesty's foreign possessions, all her colonies and India, the German Empire, Spain and all her territories, Italy, France and all her colonies, Belgium, Switzerland, Haiti, Liberia, and Tunis.

The Articles of the Copyright Union came into force on the 6th of December, 1887. They may be summarised as under.

Authors of any country of the Union or their lawful representatives shall enjoy the rights of natives in the other countries for their works, published or unpublished.

Necessary Formalities.—The enjoyment of the rights of the Union is subject to the accomplishment of the formalities, if any, prescribed by the law of the country of origin of the work. The country of origin is the country in which the work is first published. In the case of simultaneous publication, the country giving the shortest copyright protection is the country of origin for the purpose of the Convention (Art. 2).

Application to Works by Authors in Countries not in the Union.—The benefits of the Convention apply to publishers of works published in one of the countries of the Union, the authors

of which belong to a country which is not a party to the Union (Art. 3).

What Property is Protected.—The stipulations apply to every production whatever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction (Art. 4).

Translations.—Authors or their lawful representatives will henceforward have the exclusive right to make or to authorise a translation of their works for ten years from the publication of the original work in one of the countries of the Union, special provision being made as to works published in incomplete parts, and as to volumes published at intervals and collections (Art. 5) and authorised translations are protected as original works (Art. 6). The period of ten years thus allowed dates from the 31st of December of the year in which the original work was published.

Notice necessary to Prohibit Reproduction.—Articles in newspapers or periodicals published in any of the countries of the Union may be reproduced in the original or in translation in other countries of the Union, unless such reproduction is prohibited by notice; but in periodicals a *general* notice in the beginning of each number will be sufficient. This prohibition, however, cannot be made to apply to articles of political discussion, the news of the day, or current topics (Art. 7).

Extracts.—The liberty of making extracts from literary or artistic works for use in publications designed for educational or scientific purposes, or for chrestomathies, is to be regulated by the domestic legislation of the different countries of the Union, or by special arrangements existing between them (Art. 8).

Dramatic Representations.—The rights enjoyed by literary and artistic works are expressly extended to the public representation of dramatic or dramatico-musical works published or unpublished, and during the existence of their exclusive right of translation the authors or their lawful representatives are also protected against the unauthorised public representation of translations of such works (Art. 9).

Dramatisation and other Adaptations.—Unauthorised indirect appropriations such as adaptations, arrangements of music, &c., are forbidden when they reproduce the original work with non-essential alterations, additions, or abridgments so made as not to confer the character of a new original work: but decisions under this clause are to be regulated by the law of the country in which the supposed infringement occurs and the case is tried (Art. 10). Under this Article the dramatisation of a novel is forbidden in some countries in the Union but not in others.

Registration.—Registration or deposit of copies is not required in any country but the country of origin, and in the country of origin it is only necessary to comply with the domestic law of that country (Art. 2).

Term of Copyright.—No rights can exist under these Articles in any country of the Union for a longer period than that granted in the country in which the work is first published, nor can any work claim a longer protection in any country than is allowed by the law of that country to its native publications (Art. 2).

Piracy.—In proceedings against piracy the tribunal may require a certificate that the formalities required by the Copyright law of the country of origin have been complied with; or it may without further proof admit the author to institute proceedings. In the case of an anonymous or pseudonymous work, the publisher is entitled to institute proceedings (Art. 11). Pirated works may be seized on importation, conformably to the domestic law of each State (Art. 12).

Right of Prohibition.—The right to permit, control, or prohibit the circulation or representation of any work may be exercised in each country by its own Government (Art. 13).

Photographs.—In countries of the Union where the character of artistic works is not refused to photographs under the domestic law, they are admitted to the benefits of the Convention; and an authorised photograph of a protected work of art shall enjoy legal protection in all countries of the Union for the same period as the right of reproduction of the original work exists (Final Protocol).

Choregraphic Works.—Choregraphic works implicitly included in the domestic legislation of any country of the Union are expressly admitted to the benefits of this Convention (Final Protocol, Art. 2).

Colonial Copyright.

The Imperial Copyright Acts run throughout the whole of the British dominions. Books published in any colony since the coming into operation of the International Copyright Act, 1886 (49 & 50 Vict. c. 33), have copyright throughout the British dominions.

India and some colonies with Legislative Assemblies have passed special Copyright Acts affecting *works originally produced therein*, but each Act only runs in the country or colony which passed it.

Alien Author resident within British Dominions.

An alien who first publishes in England an original work of

which he is the author is entitled to the copyright, provided that at the time of the publication he is residing (however temporarily) in any part of the British dominions; although the temporary residence be in a British colony with an independent Legislature, under the laws of which he would not be entitled to copyright (*a*).

Agreements between Authors and Publishers.

An agreement between an author and a firm of publishers whereby the latter agree to publish a work at their own risk and divide the net profits with the author is a personal agreement, and therefore on a complete change in the membership of the firm the agreement comes to an end; and such an agreement does not pass the copyright (*b*).

If an agreement be entered into between an author and a publisher, whereby the publisher is to print and publish a work at his own expense and risk, and after deducting from the produce of sales all charges and expenses of printing, advertising, publisher's commission, &c., the profits remaining are to be divided equally between author and publisher, such an agreement (it has been held) is not a sale of the copyright, but a mere personal contract or special agency. And such an agency cannot be assigned over the head of the author, so as to give the benefit of it to any other publisher (*c*).

This principle will apply equally in the case of a similar agreement between an author and a limited company (*d*).

So long as the publishers, parties to the contract, had performed their part of it, and were ready to continue so to do, they would be entitled to prevent the author from publishing a fresh edition, which might interfere with the sale of an edition they had on hand; or from putting an end to the agency without recompensing the publishers for expenses incurred (*e*).

Delivery of Books to Public Libraries.

One copy of every new book, and also of every second and subsequent edition of such book, if it contains additions or alterations, must be deposited at the British Museum, with all maps, prints, or other engravings belonging to it, finished and coloured, as are the best copies of the work, within one month after publication, if first published within the bills of mortality; or within three months if elsewhere in the United Kingdom.

(*a*) *Routledge* v. *Low*, 37 L. J. Ch., 454.
(*b*) *Hole* v. *Bradbury*, 48 L. J. Ch. D., 673.
(*c*) *Stevens* v. *Benning*, 1 K. & J., 174.
(*d*) *Per* Stirling, J., in *Griffith* v. *Tower Publishing Company, Limited, and Moncrieff* (1897), 1 Ch. 21.
(*e*) *Reade* v. *Bentley*, 3 K. & J., 278.

And within twelve months after publication, on demand in writing, left at the publisher's abode:—One copy (upon the paper of which the larger number of copies of the book is printed for sale) to the Bodleian Library at Oxford; one to the Public Library at Cambridge; one to the Advocates' Library at Edinburgh; and one to the Library of Trinity College, Dublin. Penalty for default in delivering copies as required, besides the value of the book, a sum not exceeding £5. (5 & 6 Vict. c. 45, §§ 6—10.)

Assignment of Copyright.

An assignment of copyright must be in writing. Registered copyrights, or any share or shares thereof, may be assigned, without payment of any stamp duty, by the registered proprietor lodging, at Stationers' Hall, an entry signed by him in the form prescribed by the Statute, together with a fee of 5s. (5 & 6 Vict. c. 45, § 13.)

Immoral Publications.

No copyright can exist in any publication which is immoral blasphemous, or seditious in its tendency, or defamatory of private character; or which, with a view to defraud the public is published as the work of one who is not the author (*a*).

Advertisements.

There can be no copyright in an advertisement; but there may be in illustrations contained in an advertisement or catalogue of goods for sale (*b*).

Crown and University Copyright.

The Crown enjoys the exclusive privilege of printing all Acts of Parliament, proclamations, &c.; also the liturgies and books of divine service, and the authorised translation of the Bible. These privileges are extended to the Crown's grantees; of whom are the Universities of Cambridge and Oxford.

These Universities also enjoy, by Act of Parliament, the sole liberty of printing for ever, at their own presses, all books of which the copyright has been bequeathed or given to them in perpetuity; and a similar right belongs to the colleges of Eton, Westminster, and Winchester.

Copyright in Statistics or in Portion of a Work.

If a person obtain information of the nature afforded by statistical tables, directories, and such like, and publish the same, another person has no right to transfer into his own

(*a*) *Wright* v. *Tallis*, 1 C. B., 907.

(*b*) *Maple* v. *Junior Army and Navy Stores*, 52 L. J. Ch., 67; overruling in part *Cobbett* v. *Woodward*, 41 L. J. Ch., 656.

work a considerable portion of the information so published, although it may form but a small part of such work (*a*).

Where a Plaintiff had printed monthly time tables of the local train service, taken from the Companies' tables, and had added four pages of original matter relating to circular tours, and the Defendant had issued similar tables, including the four pages as to circular tours, an injunction was granted restraining the reprinting of the four pages, on the ground that, although that matter formed a small part only of the Plaintiff's book, it could be treated as an independent work and protected as copyright, notwithstanding that there was, in this case, no copyright in the time tables taken from the official tables (*b*).

Prints and Engravings.

The copying of prints and engravings by photography or by any other process is an offence within the Statute (*c*) : and so also is the selling of a copy with colourable variations (*d*). A print or engraving which is the property of a partnership firm need not bear the name of every member of the firm. The name of the firm alone is sufficient (*e*).

Where an exhibition at a music-hall consisted of *tableaux vivants* taken from copyright pictures, and certain newspapers published illustrations of these *tableaux*, the owner of the copyrights sought an injunction against the managers of the music-hall restraining the exhibition of the *tableaux*, and a further injunction against the proprietors of the newspapers prohibiting their illustration ; but it was held that there was no infringement of copyright in the pictures (*f*). In one case, however, it was held that part of a copyright picture reproduced as a background to *tableaux* was an infringement (*g*).

The sale, by the owner of copyright illustrations, of electro blocks of the illustrations for use in a manufacturer's catalogue, although made without any written agreement limiting their use, does not give the purchaser of the blocks any power to authorise their use by a third party (*h*).

(*a*) *Scott* v. *Stanford*, 3 L. R. Eq., 718.
(*b*) *Leslie* v. *Young and Sons* (1894), W. N., 105.
(*c*) *Gambart* v. *Ball*, 32 L. J. C. P., 166; *Graves* v. *Ashford*, 2 L. R. C. P., 410.
(*d*) *West* v. *Francis*, 5 B. & Ald., 742.
(*e*) *Rock* v. *Lazarus*, 42 L. J. Ch., 105.
(*f*) *Hanfstaengl* v. *Empire Palace*, and *Hanfstaengl* v. *Newnes* (1894), 2 Ch. 1; W. N. 107; *Hanfstaengl* v. *Baines*, C. A. (1894) 3 Ch., 109; (1895) A. C. 20.
(*g*) *Hanfstaengl* v. *Empire Palace*, per Stirling, J., (1895) W. N., 76.
(*h*) *Per* Romer, J., *Cooper* v. *Stephens*, L. R. (1895), 1 Ch., 567.

SECTION II.—PATENTS, DESIGNS, AND TRADE MARKS.

Patent Agents.

By an Act of 1888 a person is not entitled to describe himself as a "Patent Agent," whether by advertisement, by description on his place of business, by any document issued by him, or otherwise, unless registered as a patent agent under the Act; and any person who knowingly describes himself as a patent agent in contravention of the Act is liable on summary conviction to a fine of £20. (51 & 52 Vict. c. 50, § 1.) (*a*)

Application for and Grant of Patents.

Any person, whether a British subject or not, may apply for a patent. Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly. (46 & 47 Vict. c. 57, § 4.)

The application, which must be in the form set forth in the Act, must be sent to the Patent Office (*b*), and must contain a declaration that the applicant is in possession of an invention of which he claims to be the first inventor, and be accompanied by either a provisional or complete specification, with drawings, if required. (46 & 47 Vict. c. 57, § 5; 48 & 49 Vict. c. 63, § 2.)

If, after an application has been made, but before a patent has been sealed, another application is made accompanied by a specification bearing the same or a similar title, the comptroller, if he thinks fit, on the request of the second applicant, may within two months of the grant of a patent on the first application, either decline to proceed with the second application, or allow the surrender of the patent, if any, granted thereon. (51 & 52 Vict. c. 50, § 2.)

If the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within

(*a*) The Register of Patent Agents may be purchased at the Chartered Institute of Patent Agents (19, Southampton Buildings, Chancery Lane, London), or of Messrs. Eyre and Spottiswoode, East Harding Street, London.

(*b*) 25, Southampton Buildings, Chancery Lane, London. The "Patent Office" referred to in the statute is a Government Department, the full title of which is "Patent, Designs, and Trade Marks Office." It is one of the Departments of the Board of Trade, and must not be confounded with the numerous (self-styled) "Patent Offices" which are merely the private offices of certain Patent Agents.

nine months from the date of the application. If not left within that time the application shall be deemed to be abandoned, unless an extension of time has been arranged for. (46 & 47 Vict. c. 57, § 8; 48 & 49 Vict. c. 63, § 3.)

On the acceptance of the complete specification the comptroller shall advertise the acceptance; and the application and specification, with the drawings, shall be open to public inspection. (46 & 47 Vict. c. 57, § 10.)

Opposition to Grant of Patent.

Any person may at any time within two months from the date of the advertisement of the acceptance of a complete specification, give notice at the Patent Office of opposition to the grant of the patent, on any one of several grounds mentioned in the Acts. (46 & 47 Vict. c. 57, § 11; 51 & 52 Vict. c. 50, § 4.)

Extent, Duration, and Extension of Patent.

Every patent when sealed shall have effect throughout the United Kingdom and the Isle of Man. The duration thereof shall be 14 years. But every patent shall, notwithstanding, cease if the patentee fails to make the prescribed payments, unless he can show that the failure arose through accident, mistake, or inadvertence. (46 & 47 Vict. c. 75, §§ 16, 17.)

A patentee may petition the Judicial Committee of the Privy Council for an extension of the term of his patent, but the petition must be presented at least six months before its expiration. If the Judicial Committee report that the patentee has been inadequately remunerated by his patent it may be extended for a further term not exceeding seven, or in exceptional cases 14 years, or a new patent may be granted, under certain restrictions. (46 & 47 Vict. c. 57, § 25.)

Fees on obtaining Patents, and Renewal.

On application for provisional protection, £1; and on filing complete specification, £3; or on filing complete specification with first application, £4; on certificate of renewal before end of four years from date of patent, £50; on certificate of renewal before end of seven years (or in the case of patents granted after commencement of Act, before the end of eight years) from date of patent, £100; or the fees of £50 and £100 may be paid by annual instalments (in the proportions mentioned in the Act), beginning with the fourth year. (46 & 47 Vict. c. 57, § 24.)

Compulsory Licences.

If on the petition of any person interested it is proved to the Board of Trade that by reason of the default of a patentee

to grant licences on reasonable terms—(i) the patent is not being worked in the United Kingdom ; or (ii) the reasonable requirements of the public with respect to the invention cannot be supplied ; or (iii) any person is prevented from working or using to the best advantage an invention of which he is possessed, the Board may order the patentee to grant licences on such terms as to payment or otherwise as the Board may deem just, and any such order may be enforced by mandamus. (46 & 47 Vict. c. 57, § 22.)

Patent to Bind Crown.

A patent shall have to all intents the like effect as against Her Majesty the Queen, her heirs and successors, as it has against a subject, but any department of the service of the Crown is to be at liberty to use an invention for the services of the Crown on terms to be agreed on with the patentee, or, in default of such agreement, on such terms as may be settled by the Treasury. (46 & 47 Vict. c. 57, § 27.)

Infringement of Patent.

An Action at law for damages is the proper remedy against a person for infringing another's patent. In any such Action, the Court or Judge may, on the application of the Plaintiff or Defendant respectively, make such order for an injunction, inspection, or account, and give such directions respecting the same as to such Court or Judge may seem fit (*a*).

Registration and Copyright of Designs.

Upon application by or on behalf of any person claiming to be the proprietor of any new or original design, the design may be registered at the Patent Office (*b*) in accordance with the terms of the Act. The applicant must furnish copies of the drawings, photographs, &c., or exact representations or specimens of the design. A certificate of registration will be granted to the proprietor of the design when registered. (46 & 47 Vict. c. 57, § 49.)

When a design is registered, the registered proprietor of the design will have copyright in it during 5 years from the date of registration. But if a registered design is used in manufacture in any foreign country, and is not used in this country within 6 months of its registration, the copyright in the design will cease. (§§ 50, 54.)

Marking Registered Designs.

Before delivery, on sale of any articles to which a registered

(*a*) See *Hills* v. *London Gas Co.*, 5 H. & N., 312.
(*b*) See footnote to p. 313, *ante*.

design has been applied, each article must be marked to denote that the design is registered; otherwise the copyright in the design will cease unless the proprietor shows that he took all proper steps to ensure marking. (46 & 47 Vict. c. 57, § 51.)

Register of Trade-Marks.

Upon application by or on behalf of any person claiming to be the proprietor of a trade-mark, it may be registered at the Patent Office (*a*). The application must be in the form prescribed by the Acts, and the trade-mark must consist of or contain at least one of the following essential particulars:—

(i) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or (ii) a written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade-mark; or (iii) a distinctive device, mark, brand, heading, label, or ticket; or (iv) an invented word or invented words; or (v) a word or words having no reference to the character or quality of the goods, and not being a geographical name.

There may be added to any one or more of these particulars any letters, words, or figures, or combination thereof; but no right to the exclusive use of the "added matter" will be given.

There may be a registration of a series of trade-marks; and trade-marks may be registered in colours. (46 & 47 Vict. c. 57, §§ 62—67, amended by 51 & 52 Vict. c. 50, §§ 8—11.)

Proceedings on Infringement of Trade-Marks.

A manufacturer of goods may bring an action against a person who uses his trade-mark, and sells goods with such trade-mark affixed, upon a fraudulent representation that they are of the manufacture which such trade-mark would denote them to be (*b*). In such an Action a claim may be made for an injunction to restrain the use of the Plaintiff's trade-mark (*c*). And an injunction will lie even against a person who *innocently* infringes another's trade-mark (*d*).

Unauthorised Use of Royal Arms.

Any person who, without the authority of Her Majesty, or any of the Royal Family, or of any Government department, assumes or uses in connection with any trade, &c., the Royal Arms or any resemblance thereof, shall be liable on summary conviction to a fine of £20. (46 & 47 Vict. c. 57, § 106.)

(*a*) See foot-note to p. 313, *ante*.

(*b*) *Rodgers* v. *Nowill*, 5 C. B., 109.

(*c*) *Farina* v. *Silverlock*, 26 L. J. Ch., 11; *Collins Co.* v. *Reeves*, 28 L. J. Ch., 56.

(*d*) *Millington* v. *Fox*, 5 Myl. & Cr., 338; *Dixon* v. *Fawcus*, 30 L. J. Q. B., 137.

Misleading Trade Descriptions.

A trader is not entitled to pass off his goods as the goods of another trader by selling them under a name which is likely to deceive purchasers into the belief that they are buying the goods of that other trader, although in its primary meaning the name is merely a true description of the goods sold. Thus, where the Plaintiff had for some years made belting and sold it as "Camel Hair Belting"—a name which (it was shown) had come to mean in the trade the Plaintiff's belting and nothing else—and the Defendant began to sell belting made of the yarn of camel's hair, and stamped it "Camel Hair Belting" so as to be likely to mislead purchasers into the belief that it was the Plaintiff's belting, it was decided by the House of Lords that the Plaintiff was entitled to an injunction restraining the Defendant from using the words "camel hair" as descriptive of belting made or sold by him and not manufactured by the Plaintiff, except in such manner as to clearly distinguish such belting from the Plaintiff's (*a*).

Merchandise Marks Act, 1887.

The whole subject of trade-marks has recently been placed upon a new footing by this Act (50 & 51 Vict. c. 28).

Under the statute every person who (by himself or others) (i) forges any trade-mark; or (ii) falsely applies to goods any trade-mark or any mark so nearly resembling a trade-mark as to be calculated to deceive; or (iii) makes any die, block, machine, or other instrument for the purpose of forging a trade-mark; or (iv) applies any false trade description to goods; or (v) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade-mark, shall be guilty of an offence, unless he proves that he acted without intent to defraud.

Every person, also, who sells, or has in his possession for trade or manufacture, any goods or things to which any forged trade-mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade-mark as to be calculated to deceive is falsely applied, shall be guilty of an offence, unless he proves that he had taken all reasonable precautions against committing an offence, or that otherwise he had acted innocently.

An offender is liable on conviction to imprisonment, or to heavy fines, or to both; and to forfeit every article by means

(*a*) *Reddaway* v. *Banham*, H. L. (E.) (1896) A. C., 199.

of or in relation to which the offence has been committed. The Court may order any forfeited articles to be destroyed.

Definition of "Trade-Mark" and "Trade Description."

(1) "Trade-mark" means a trade-mark registered in the Register of Trade-Marks (see *ante*, p. 316), and includes any trade-mark which, either with or without registration, is protected by law in any British possession or foreign State, under Order in Council.

"Trade description" means any description, statement, or other indication, direct or indirect, (*a*) as to the number, quantity, measure, gauge, or weight of any goods, or (*b*) as to the place or country in which any goods were made, or (*c*) as to the mode of manufacturing any goods, or (*d*) as to the material of which any goods are composed, or (*e*) as to any goods being the subject of an existing patent, privilege, or copyright.

"False trade description" means a trade description that is false in a material respect, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade-mark, or part of a trade-mark, shall not prevent such trade description being a false trade description.

(2) The provisions of the Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade-mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose they really are.

(3) The provisions of the Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials, and to goods with the false name or initials applied, in like manner as if such name or initials were a trade description. (50 & 51 Vict. c. 28, § 3.)

For the purposes of the Act of 1887, the Customs entry relating to imported goods is now (1891) to be deemed a trade description applied to the goods. (54 Vict. c. 15, § 1.)

A firm of gunpowder manufacturers who were under contract to deliver to the English Government a quantity of gunpowder, but not necessarily of their own make, upon an explosion occurring in their mills imported from Germany

sufficient powder to make up a deficiency, and in cases marked "Manufactured in Germany." The powder was removed from these cases into others which bore a label giving the name of the English firm, and was so delivered under the contract. The Government made no complaint, the powder being of the stipulated quality, but on the manufacturers being summoned for "an offence under the Act," and a case stated, the Queen's Bench held that the Defendants had committed such an offence in using a label which was a "false trade description," as implying that the powder was of their own make, and this (though no cheating was intended) was "intent to defraud" under the Act (*a*).

Forgery of Trade-Mark.

A person shall be deemed to forge a trade-mark who either (i) without the assent of the proprietor makes that trade-mark or a mark so nearly resembling it as to be calculated to deceive; or (ii) falsifies any genuine trade-mark, whether by alteration, addition, effacement, or otherwise; and any trade-mark or mark so made or falsified is to be deemed a forged trade-mark. (50 & 51 Vict. c. 28, § 4.)

Applying Marks and Descriptions.

A person shall be deemed to apply a trade-mark or mark or trade description to goods who (i) applies it to the goods themselves; or (ii) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed for sale, trade, or manufacture; or (iii) places, encloses, or annexes any goods sold or exposed for sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing, to which a trade-mark or trade description has been applied; or (iv) uses a trade-mark or mark or trade description so as to lead to the belief that the goods are thereby designated or described by that trade-mark or description. "Covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.

A person shall be deemed to falsely apply to goods a trade-mark or mark, who without the assent of the proprietor applies such trade-mark, or a mark so nearly resembling it as to be calculated to deceive. (50 & 51 Vict. c. 28, § 5.)

Procedure as to Forfeited Goods.

If the owner of any goods which, if the owner thereof had

(*a*) *Starey* v. *Chilworth Gunpowder Co.*, L. R. (1890) 24 Q. B. D., 90.

been convicted, would be liable to forfeiture, is unknown or cannot be found, an information may be laid for enforcing such forfeiture, and a Court of Summary Jurisdiction may order the goods to be destroyed or disposed of, and out of the proceeds award to any innocent party any loss he may have sustained. (50 & 51 Vict. c. 28, § 12.)

Prosecution of Offences.

No prosecution under the Act is to be commenced after the expiration of 3 years next after the commission of the offence, or 1 year next after the first discovery thereof by the prosecutor, whichever first happens. (50 & 51 Vict. c. 28, § 15.)

Prohibitions as to Importation of Goods.

All goods liable to forfeiture under the Act, and also all goods of foreign manufacture bearing any English name or trade mark, unless the latter is accompanied by a definite indication of the country in which the goods were produced, are prohibited to be imported into the United Kingdom. (50 & 51 Vict. c. 28, § 16.)

By an Act of 1897, goods proved to the satisfaction of the Commissioners of Customs to have been made or produced wholly or in part in any foreign prison (except goods in transit or not imported for the purposes of trade, or of a description not manufactured in the United Kingdom) are prohibited to be imported into the United Kingdom. (60 & 61 Vict. c. 63.)

Warranty of Trade-Mark or Description.

On the sale or in the contract for the sale of any goods to which a trade-mark, or mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is genuine, and not forged or falsely applied, or that the trade description is not a false trade description within the Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale to and accepted by the vendee. (50 & 51 Vict. c. 28, § 17.)

False Representation as to Manufactured Goods.

Any person who falsely represents that any goods are made by a person holding a Royal Warrant, or for the service of Her Majesty, or any of the Royal Family, or any Government department, will be liable, on summary conviction, to a penalty not exceeding £20. (50 & 51 Vict. c. 28, § 20.)

PART VII.

LIBEL AND SLANDER.

A LIBEL may be defined as anything published in print or in writing, or by illustration, which, in the opinion of a Jury, and of the Court, is calculated to hold a person up to hatred, contempt, or ridicule. A libel may therefore be contained in a picture, as a print, drawing, painting, or caricature, as well as in a book, newspaper, pamphlet, letter, or other paper or writing.

Libel, or written defamation, is, in the eyes of the law, an injury of a greater and more aggravating nature than slander, by reason of the more durable publicity which may thus be given to the defamatory matter, and the deliberation of the defamer in reducing the slander to writing. Two remedies are therefore available for libel; one by instituting criminal proceedings against the libeller, the other by bringing an Action. When the libel is of a very gross and provoking nature, criminal proceedings are commonly resorted to. In ordinary cases the remedy is by Action.

Slander, or oral defamation, is a tort which may be the subject of civil proceedings, by Action at law for damages; but criminal proceedings cannot be taken for mere verbal slander. In the case, however, of words amounting to sedition, blasphemy, or gross obscenity, an indictment will lie; and so also for threatening words uttered as a challenge to fight a duel, or to provoke a breach of the peace.

Words of mere vulgar abuse, such as calling a person "a rogue," "a scoundrel," or "a blackguard," and the like, are not actionable; but, if put into writing or print and published (*i.e.*,

shown, sent, posted, or delivered) to any third person, they are actionable as a libel.

The mere calling a man a "swindler," a "cheat," or a "thief," is not actionable, unless it be spoken of him in his trade or business, so as to have injured him with his customers: but if such words are committed to writing and circulated in any way, they are actionable (*a*).

Words imputing misconduct, gross ignorance, or incapacity to professional men in the discharge of their professional duties are actionable without proof of special damage (*b*).

To impute drunkenness to a master mariner in command of a vessel is actionable, without proof of special damage (*c*).

Words imputing fraud to a tradesman in the transaction of his business, such as cheating, using false weights, &c., are actionable without proof of special damage (*d*).

The law shows great tenderness in protecting tradesmen against imputations of insolvency or such as affect their credit, which, if believed, must operate to their serious prejudice (*e*). And words are actionable when they throw discredit upon the particular commodity in which a tradesman deals (*f*). But a statement in a comic paper that a person who bought a very thin umbrella, bearing a certain fancy name, would find he could open it but could not shut it up into its former small compass, was held to be a joke and not a serious slander, although the fancy name mentioned in the paper was that applied by Plaintiff to his make of umbrella (*g*).

Defamatory words imputing an indictable offence to any one are actionable, without proof of any special damage; as also all words which directly tend to the prejudice of any one in his office, profession, trade, or business (*h*).

A trading firm were in the habit of receiving, in payment from their customers, cheques on various branches of a bank, which were cashed for the convenience of the firm at a particular branch of the bank. Having had a squabble with the manager of that branch, the firm sent a printed circular to a large number of their customers (who knew nothing of the squabble) giving notice that they would not receive in payment cheques drawn on any of the branches of the bank. The circular

(*a*) *I'Anson* v. *Stewart*, 1 T. R., 748.
(*b*) Bac. Abr., Tit. Slander.
(*c*) *Irwin* v. *Brandwood*, 33 L. J. Ex., 257.
(*d*) *Evans* v. *Harlow*, 5 Q. B., 624.
(*e*) Folk., Sl. & Lib., p. 123 (4th ed.) (*f*) Same, p. 125.
(*g*) *Davis* v. *Dalziel*, reported in *Times*, June 17, 1887.
(*h*) Folk., Sl. & Lib., 111 (4th ed.).

becoming known to other persons, there was a run on the bank, and loss resulted. The bank having brought an Action against the firm for libel, on the ground that the circular by innuendo imputed insolvency to the bank, it was held that in their natural meaning the words were not libellous: that the onus lay on the bank to show that the circular had a libellous tendency; and that, as the evidence failed to show this, there was no case to go to the Jury, and the Defendants were entitled to judgment (*a*).

It would seem that a wife who is judicially separated from her husband may maintain an action against him for libel (*b*).

Imputations of Immorality or Unchastity.

It is an old rule of law that verbal imputations of mere immoral conduct are not actionable, unless special damage be occasioned thereby to the person of whom they are spoken in his office or business; an exception being made in the case of a beneficed clergyman, against whom such an imputation is actionable without proof of damage. This is still the rule as regards men.

In the case of women under the old law, if, in consequence of an imputation of immorality, a woman had to leave her lodgings, or lost emolument of any kind, or lost marriage with a man to whom she was engaged, or even the hospitality of friends, an Action might sometimes be maintained for the slander (*c*). But it was held that mere exclusion from the society and congregation of a religious sect was not such special damage as would sustain the action (*d*).

But now, by the Slander of Women Act, 1891 (54 & 55 Vict. c. 51), it is enacted that words spoken and published after the passing of the Act, which impute unchastity or adultery to any woman or girl, shall not require special damage to render them actionable; provided that "in any action for words spoken and made actionable by this Act, a Plaintiff shall not recover more costs than damages," unless the judge certify there was reasonable ground for the action. The Act does not apply to Scotland.

Defamatory words, imputing to a person that he is afflicted with a contagious disease of any kind, are actionable (*e*).

(*a*) *Capital and Counties Bank* v. *Henty*, 7 L. R. App. Cas., 741.
(*b*) So held *per* Kennedy, J., in *Robinson* v. *Robinson*, reported (from Liverpool assizes) in *Times* of August 3, 1897.
(*c*) Folk., Sl. & Lib., 316(4th ed.).
(*d*) *Roberts* v. *Roberts*, 33 L. J. Q. B., 249.
(*e*) *Villars* v. *Monsley*, 2 Wils., 403.

What are Libels.

As to what constitutes a libel, anything which implies, or may be generally understood to imply, reproach, scandal, or ridicule to any person is a libel. So also any publication made, without justification or lawful excuse, which is calculated to injure the reputation of another, by exposing him to hatred, contempt, or ridicule, whatever the intention may have been. And so also as to any words in writing from which it may be inferred misconduct is imputed, or which tend to bring a person into contempt, or to set other persons against him as one who has misconducted himself. And further the publication of anything which can by any construction be shown to be disparaging to the character of another may be libellous; and the Plaintiff has a right to take the opinion of the Jury upon it (*a*).

Wherever the circumstances under which the defamatory matter was published do not present any justifiable occasion for speaking or writing such, or show it to have been done in pursuance of some duty, or for the enforcement of a right, the communication is deemed in law to be malicious.

As to libels *by insinuation*, it is not only such publications in writing as are expressed in a direct and open manner that amount to a libel, but also that which is expressed in irony, by insinuation, or other less open and direct manner; for the law is never to be defrauded on account of the mystery of the satire (*a*).

As to libels *by initials:* it is no protection to a libeller that the names of the persons libelled were not published, but merely the initial letters of their names (*b*).

A libel may be expressed in *ironical language*, as in a newspaper paragraph, headed "An Honest Lawyer," the writer meaning in fact that the party was a *dis*honest lawyer. So also a libel may be by comparison with notorious persons or by figurative or allegorical expression (*c*).

Where a man had been tried for murder in Scotland, and a verdict of "not proven" returned, it was held clearly libellous to exhibit an effigy of him placed outside of, but in close proximity to, a "chamber of horrors," and connected by reference with "the scene of the murder," in an English wax-work show (*d*).

(*a*) Folk., Sl. & Lib., 156, 157, 165 (4th ed.).
(*b*) *Roach* v. *Read*, 2 A. H. C., 469.
(*c*) Folk., Sl. & Lib., 164 (4th ed.).
(*d*) *Monson* v. *Tussauds, Limited*, and *Monson* v. *Louis Tussaud* (1894), 1 Q. B., 671.

Criticisms upon Authors.

Every man who publishes a book commits himself to the judgment of the public; and any one may comment upon his performance. If the commentator do not step aside from the work, or introduce fiction for the purpose of condemnation, he exercises a fair and legitimate right; but if he follow the author into domestic life for the purpose of defaming and vilifying him, he will be liable to an Action.

Criticisms by Editors of Newspapers.

Editors of newspapers may comment on public performances, but they must do so without malice, or intent to injure the proprietor in the eyes of the public. If fairly done, however severe the censure, the editor will be protected; but if the comment be malevolent, it will be deemed a libel, and actionable (*a*).

An imputation in a newspaper of immorality in the plot of a drama, the joint production of an author and his wife, has been held to be libellous (*b*).

Libel in a Newspaper.

In an Action for a libel contained in any public newspaper, or other periodical publication, the Defendant may plead that it was inserted without malice, and that before Action brought he published an apology; he may also pay money into Court as amends. (6 & 7 Vict. c. 96, § 2.)

If the libel has been inserted in the newspaper without the knowledge, consent, or authority of the publishers or proprietors (though they may be liable to an Action) they are not liable criminally (*c*).

And if the proprietor of the newspaper admits publication, the Plaintiff is not entitled to interrogate the Defendant as to the name of the writer of the alleged libel, unless the identity of such writer is a fact material to an issue in the case (*d*).

Libels and Comments on Public Men.

Criticism may reasonably be applied to a public man in a public capacity which may not be applied to a private individual. Every subject has a right to comment on those

(*a*) *Dibden* v. *Swan*, 1 Esp., 26.
(*b*) *Merivale* v. *Carson*, L. R., 20 Q. B. D., 275.
(*c*) *The Queen* v. *Holbrook*, 4 Q. B. D., 42.
(*d*) *Gibson* v. *Evans*, 23 L. R. Q. B. D., 384; and see also *Hennessy* v. *Wright*, 36 W. R., 879.

acts of public men which concern him as a subject of the realm, if he do not make his commentary a cloak for malice and slander: but any imputation of wicked or corrupt motives is unquestionably libellous.

The public conduct of a public man may be discussed with the fullest freedom. It may be made the subject of hostile criticism and of hostile animadversions, provided the language of the writer be kept within the limits of an honest intention to discharge a public duty, and is not made a means of promulgating slanderous and malicious allegations (*a*).

Every man may publish at discretion his opinions concerning forms and systems of government. If they be wise and enlightening, the world will gain by them; if they be weak and absurd, they will be laughed at and forgotten; and if they be *bonâ fide*, they cannot be criminal, however erroneous (*b*).

Libels of Persons in their Profession, Trade, or Business.

Libels which affect persons in their profession, trade, or business, as containing imputations of fraud, dishonesty, misconduct, incapacity, unfitness, or want of any necessary qualification in the exercise thereof, are actionable without proof of malice or of special damage. But the libel must clearly appear to apply to the Plaintiff, with reference to his office, profession, trade, or business (*c*).

Any imputations in writing against a person who is in the enjoyment of an office, either public or private, of honour, profit, or trust, which import a charge of unfitness to administer the duty of the office, are libels (*c*).

With respect to offices not of profit, an action for slander will not lie in the absence of proof of special damage, unless the imputation be one which, if true, would be a ground for removing the Plaintiff from his office; and it has been held that to charge a town councillor with drunkenness was not such an imputation (*d*).

Trade Libels.

For a person in trade to puff his own wares, and to proclaim their superiority over those of his rivals, is not actionable, and an action will not lie for even a false statement disparaging a rival's goods without proof of special damage. It is immaterial that malice as well as falsehood may be alleged against such a

(*a*) *Seymour* v. *Butterworth*, 3 F. & F., 372.
(*b*) Folk., Sl. & Lib., 612 (4th ed.). (*c*) Same, p. 167.
(*d*) *Alexander* v. *Jenkins*, C. A. (1892) W. N., 48; 1 Q. B., 797.

statement, if the statement itself is not actionable. And where a Defendant who was the proprietor of a particular "infant's food" bought, for sale to his own customers, the Plaintiff's infant's food, and affixed to the Plaintiff's wrappers a label to the effect that his (the Defendant's) food was "far more nutritious and healthful than any other," it was held that this did not amount to a trade libel, but was merely the puff of a rival trader (*a*).

Truth of the Slander or Libel.

A person who has published a libel or uttered a slander of another is, *primâ facie*, justified in law, and exempt from *civil* responsibility, if that which he has uttered or published is true, but the burden of proving it to be true lies upon the person so speaking or publishing it. The truth of a libel is, however, no defence to an *indictment* or criminal information for publishing it, except under the conditions stated in Lord Campbell's Libel Act (6 & 7 Vict. c. 96, § 6).

Repetition of Slanderous Rumour.

No person is justified in repeating and publishing a slanderous rumour, unless he can show that such repetition was made on a justifiable occasion, or that the rumour was true. It is no excuse that the rumour existed, and that the Defendant merely repeated it as a rumour (*b*).

Privileged Communications.

The class of privileged communications comprehends all those that are made *bonâ fide* in the performance of a duty, whether public or private, or with a fair and reasonable purpose of protecting the interest of the party to whom they are made, or to the interest of both in a matter in which they are mutually interested. Such communications, although injurious and painful to another, are held to be excusable in law from the consequences which may ensue, provided the privilege has been exercised within the limits afforded by the occasion; and if so, an Action for defamation, whether in the form of slander or libel, cannot be sustained in such cases, unless the Defendant can be fixed with express malice (*c*).

For, although the occasion be privileged, yet if there be

(*a*) *Mellin* v. *White*, H. L. E. (1895) A. C. 154, where the subject of trade libels was fully discussed; and see also *Evans* v. *Harlow*, 5 L. R. Q. B. 624; *Young* v. *Macrae*, 2 B. & M. 264; and *Hubbuck* v. *Wilkinson*, reported in *Times*, Nov. 9, 1898.

(*b*) Folk., Sl. & Lib., 279 (4th ed.).

(*c*) Same, pp. 515, 525; and see also *Merivale* v. *Carson*, 20 L. R. Q. B. D. 275.

evidence of express malice, the latter question must be left to the jury, and the Judge in such case can neither nonsuit nor direct a verdict for the Plaintiff.

Whether the occasion is such as to rebut the inference of malice, if the publication be *bonâ fide*, is a question of law for the Judge; whether the *bonâ fides* existed is a question of fact for the jury. And whether or not the occasion gives the privilege, is a question of law for the Judge; but whether the party has fairly and properly conducted himself in the exercise of it, is a question for the jury (*a*).

Publication of the minutes of the General Medical Council, stating the reasons for striking a medical practitioner's name off the Medical Register (see *post*, p. 541), being true, accurate, and *bonâ fide*, was held privileged, as being the report of a judicial proceeding under statutory powers of the Council (*b*).

Fair comments on all public proceedings in which the people have an interest are privileged; so also the public conduct of public men, and fair and *bonâ fide* reviews and criticisms of books and literary productions of all kinds; also of artists' paintings, and the works of sculptors, architects, and others; and the editor of a newspaper may fairly comment on the performances at any place of theatrical, musical, or public entertainment. But if in any such cases the comments be unjust *and* malevolent, or if they exceed the limits of fair criticism, or contain any attack upon private character, or any imputations of bad or sordid motives, they will not be privileged (*c*).

Speeches by Members of Parliament, if made in Parliament, are absolutely privileged; so also are observations made by judges, witnesses, and others in the course of judicial proceedings. Reports of proceedings in Parliament are also privileged, if fair and accurate.

In a case where a physician had informed the relatives of a patient (of whom he himself was also a relative) that from the symptoms for which he had been called in to treat the patient he had drawn conclusions unfavourable to her character as a married woman; upon her bringing an action for slander heavy damages were recovered, the jury being directed that there was no "privilege" protecting the physician in making such a communication (*d*).

(*a*) Folk., Sl. & Lib., p. 516 (4th ed.).
(*b*) *Allbutt* v. *General Council of Medical Education*, 23 L. R. Q. B. D., 400.
(*c*) Folk., Sl. & Lib., 517 (4th ed.).
(*d*) *Per* Hawkins, J., in *Kitson* v. *Playfair and Wife*, reported in *Times*, 28th March, 1896.

Libels on Religion.

All publications denying the truth of the Christian religion, or being of a blasphemous nature, or casting gross ridicule on the Church of England, are indictable at common law: so also all writings subversive of morality, and intending to inflame the passions by indecent or opprobrious language, and publications, the natural tendency of which is to stir up sedition, or to bring the Government or Constitution of the country into general contempt, are indictable misdemeanors (*a*).

Privilege as to Character of Servant.

A master or mistress is privileged in making a defamatory communication to a *bonâ fide* inquirer respecting the character of a servant, if it be made truthfully and without malice, the general rule being that, unless the contrary be expressly proved, it will be presumed that the communication was made without malice. The Plaintiff, to support the Action, must prove that the character was both falsely *and* maliciously given (*b*).

As to the practice of giving "characters" to servants, see further, *post*, p. 342.

Proceedings by Indictment for Libels.

Libels on individuals which are punishable by indictment are such as impute to any person the commission of any crime or misdemeanor; or are published of any person with reference to his office, profession, trade, or calling; or impute to any person that he has a contagious or infectious disease; or expose a person to hatred, contempt, or ridicule; or reflect upon sects, classes, companies, or bodies of men, though not mentioning any person in particular (*c*).

If the libel is such that it tends to provoke a breach of the peace, it may also be the subject of an indictment. In a case where a woman advertised in a newspaper for a situation, and a man wrote to her soliciting her chastity and offering money, he was tried on an indictment for libel, and convicted on a count charging him with writing and publishing a defamatory writing in the form of a letter to the prosecutrix; and it was held by the Court for the Consideration of Crown Cases Reserved that the conviction could be sustained on that count, the letter being a defamatory libel on the prosecutrix, and calculated to provoke a breach of the peace on her part or that of her family (*d*).

(*a*) Folk., Sl. & Lib., 586 (4th ed.). (*b*) Same, p. 250. (*c*) Same, p. 586.
(*d*) *Reg.* v. *Adams*, 58 L. J. M. C. 1.

Libel with Intent to extort Money.

Publishing or threatening to publish any libel, or proposing to abstain from publishing anything, with intent to extort money or goods, or with intent to induce any person to confer or procure for another an office of profit or trust, is punishable by imprisonment, with or without hard labour, for any term not exceeding 3 years. (6 & 7 Vict. c. 96, § 3.)

Punishment for False and Malicious Libel.

Any person who maliciously publishes a false and defamatory libel of another, whether he knows it to be false or not, may be apprehended by warrant, or summoned before a magistrate and committed for trial; when, if found guilty, he will be liable to fine and imprisonment for any term not exceeding two years.

Defence to Indictment for Libel.

On the trial of an indictment or information for a defamatory libel the Defendant may plead justification, alleging the truth of the libel, and that it was for the public benefit that the libellous matter should be published; and if after such plea the Defendant should be convicted, the Court will consider, in passing sentence, whether his guilt is aggravated or mitigated by such plea. (6 & 7 Vict. c. 96, § 6.)

Criminal Information for Libel.

Where the nature of a libel is such as manifestly tends to produce some great public mischief, a "criminal information" may be exhibited by and in the name of the Attorney-General, or filed by leave of the Court on motion of Counsel and rule to show cause: as if the libel tend to raise tumults and disorder among the people, by exciting their hatred against a whole class of men; or if it impute to a naval or military commander want of courage, knowledge, resolution, or veracity; or to a peer that he acted improperly as a President of a Court Martial, and had been guilty of perjury; or where bribery is imputed to a jury in giving their verdict. In suchlike cases, where public welfare requires that the libels should be promptly restrained and punished, a criminal information avoids the necessity of a previous indictment or presentment by a grand jury (*a*). When the information is granted, the Defendant is tried by a jury, as upon indictment.

Libel on a Dead Person.

Criminal proceedings will not lie for a libel on a dead man,

(*a*) Folk., Sl. & Lib., 587 (4th ed.).

unless it can be shown that the libel was published with the intention of provoking or injuring his living descendants (*a*).

Seditious Libels.

A seditious libel is a writing or other defamatory publication tending to degrade and vilify the Constitution, to promote insurrection, and to create discontent through its members, to asperse its justice, and otherwise to impair the exercise of its functions. A seditious libel need not necessarily consist of written matter. In an Irish case it was held that a woodcut or engraving of any kind might be a seditious libel.

The publication of a handbill which has a direct tendency to cause unlawful meetings and disturbances, and to lead to a violation of the laws, is a seditious libel; and as to the intent, every one must be taken to intend the natural consequences of his act (*b*).

Obscene Books, Pictures, &c.

As to the sale of obscene books, pictures, prints, and other such articles, summary powers are given to Justices, upon complaint made to them upon oath that such are kept for sale in any house, &c., to issue a warrant to search for and take possession thereof, and to summon the occupier to show cause why they should not be destroyed. (20 & 21 Vict. c. 83.)

Publication of Libel or Slander.

In order to sustain an Action for libel, it is necessary to prove a publication of the libellous matter by the party sued, to some third party. The libel may be more or less malicious and aggravating according to the mode or extent of circulation. If published in a newspaper, handbill, circular or placard, such is a general publication. If only published to one or two, or a few persons, the matter is less aggravating, on account of the limited mode of publication.

The transmission of a libellous message by telegraph is a publication for which an Action will lie (*c*).

Where the libel is contained in a book, pamphlet, or newspaper, every sale of a copy thereof by the bookseller, publisher, or proprietor, or by his or her shopman or other agent, is a publication.

It is no defence to the person who disperses a libel, to say he was unacquainted with the contents; for if so, nothing

(*a*) *Reg.* v. *Ensor*, 3 *Times* L. R., 366.
(*b*) Folk., Sl. & Lib., p. 616 (4th ed.).
(*c*) *Whitfeld* v. *S. E. R. Co.*, E. B. & E., 115.

would be more easy than to publish the most virulent papers through the hands of an agent (*a*).

Where the only publication is to the party libelled, as by letter, no Action can be brought, but the party sending the letter may be indicted; for in the case of criminal proceedings for libel, it is unnecessary to prove a publication to any but the person libelled (*b*).

In slander, an utterance to some third party must be proved. No Action can be sustained for uttering a slander *to the party slandered*, unless it be in the presence of some *third party*.

Where a person has to send a letter which may be libellous it is his duty to write it himself and mark it "private," and if a copy be necessary to copy it himself, as otherwise there will be publication of the libellous matter to his own clerks who write or copy the letter, as well as to any clerk or associate of the recipient of the letter who may open and read it in the usual course of duty (*c*). Thus, where a secretary of a company sent a type-written letter which (though libellous) was privileged as addressed to the recipient, it was held that the communication of it to the type-writing clerk, by whom the secretary's letters were ordinarily written, was a publication of the libellous matter for which privilege could not be claimed.

Hissing and interrupting Performances at Theatres.

One or more persons may lawfully hiss at the performers or performances at a theatre, or other public place of amusement; but if several persons, by a preconcerted arrangement, go to a theatre for the purpose of hissing down a performer or interrupting a performance, and do so hiss and interrupt, they may be indicted for a conspiracy (*d*). The late Lord Chief Justice Cockburn, however, expressed his disagreement with the law as here laid down (*e*).

Registration of Newspaper Proprietors.

Printers and publishers of newspapers are required, under penalties, to make a return to the Newspaper Registry Office, Somerset House, on or before the 31st of July in every year, of the title of the newspaper, and the names, occupations, and abode of the proprietors. (44 & 45 Vict. c. 60, § 9.)

But these provisions do not apply to newspapers belonging to a duly incorporated joint-stock company (§ 18).

(*a*) Folk., Sl. & Lib., 425 (4th ed.).
(*b*) Same, p. 704.
(*c*) *Pullman* v. *Hill and Co.*, C. A. (1891) 1 Q. B., 524.
(*d*) *Clifford* v. *Brandon*, 2 Camp., 358.
(*e*) In *Reg.* v. *Stainer*, 39 L. J. M. C., 57.

Offences by Printers.

The printer of a libellous or immoral work cannot sustain against the publisher who employed him an Action for wages for work and labour done upon such a work (*a*).

Not keeping for six months a copy of every paper he prints, and writing thereon the name of employer, or not producing same when required, subjects the offender to a penalty of £20. (32 & 33 Vict. c. 24.)

Summary Proceedings for Libel in a Newspaper.

Where the charge is against the proprietor, publisher, or editor of a newspaper, a Court of Summary Jurisdiction may receive evidence as to the publication being for the public benefit; that it was true, fair, and accurate; that it was published without malice; and as to any other legal defence; and may, at its discretion, dismiss the case. If the libel is of a trivial character, the Magistrate may, with the assent of the accused, deal summarily with the case, and may adjudge the Defendant to pay a fine not exceeding £50. (44 & 45 Vict. c. 60, §§ 4, 5.)

Law of Libel Amendment Act, 1888.

By this enactment (51 & 52 Vict. c. 64) several changes in the law have been made. In lieu of § 2 of the Newspaper Libel and Registration Act, 1881 (which section is repealed), the following provision is made as to newspaper reports :—

(i) A fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged, but not so as to authorise the publication of any blasphemous or indecent matter (§ 3).

(ii) A fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a Vestry, Town Council, School Board, Board of Guardians, Board or local authority constituted under Act of Parliament, or of any committee of such bodies, or of any meeting of Government Commissioners, Select Committees, or Justices in Quarter Sessions, and the publication by official request of any notice or report issued for the information of the public, shall be privileged, unless such report or publication be published maliciously. But nothing herein is to authorise the publication of any blasphemous or indecent matter, and the

(*a*) *Poplett* v. *Stockdale*, R. & M., 337.

protection thus afforded shall not avail as a defence if the Defendant has refused or neglected to insert in his newspaper a reasonable letter or statement by way of contradiction or explanation; and nothing herein is to protect the publication of any matter not of public concern and the publication of which is not for the public benefit.

"Public meeting" is defined to mean any meeting which is *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted (§ 4).

But in a case where the alleged libel had been uttered in the course of a sermon preached in a Dissenting chapel, it was ruled by the judge that the chapel service was not a "public meeting" within the terms of this section, although it had been advertised that the sermon would be preached (*a*).

No criminal prosecution is to be commenced against the proprietor of a newspaper for any libel published therein without the order of a Judge at chambers (§ 8).

By the same Act, provision was made against an abuse of the process of the Law which was illustrated in two recent cases of libel, where an error injurious to the reputation of the Plaintiff in each case had been made by one newspaper and was innocently copied by many others. The Plaintiffs in the two cases thereupon sued each newspaper separately, and recovered repeated damages (*b*).

Power is now given to a Judge or the Court, upon an application by two or more Defendants in Actions in respect to the same Libel brought by the same person, to make an order for the consolidation of such Actions, so that they may be tried together, and the damages (if any) and costs be apportioned between the several Defendants. (51 & 52 Vict. c. 64, § 5.)

Liability of Newsvendor or Bookseller.

A newsvendor or bookseller who unconsciously circulates libellous matter is free from liability if he proves that he did not know, and had no reason to believe, that the document he circulated contained such matter. "A newspaper," said one of the Judges in a recent case, "is not like a fire: a man may carry it about without being bound to suppose that it is likely to do an injury" (*c*).

(*a*) Per Wills, J., in *Chaloner* v. *Lansdown*, reported in *Times* of February 19, 1894.

(*b*) *Tucker* v. *Lawson*, 2 *Times* L. R., 593; *College* v. *Pike*, 56 L. T., 124.

(*c*) *Emmens* v. *Pottle* (C. A.), 16 Q. B. D., 354.

PART VIII.

MASTERS, SERVANTS, AND WORKMEN.

SECTION I.— MASTER AND SERVANT.

Hiring.

It is often advisable that contracts of hiring and service should be in writing, because of the provisions of the "Statute of Frauds," by which it is enacted "that no Action shall be brought upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such Action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorised." (29 Car. II. c 3, § 4.)

But it is not necessary that there should be a formal agreement signed by the party to be charged; any acknowledgment in writing will be a sufficient memorandum within the Statute—such, for instance, as a note or letter (*a*). And an agreement may be collected from a series of letters as to the hiring, &c. (*b*).

A person enrolled as a member of a volunteer corps is not *sui juris* (*i.e.* his own master), so as to be able to make a valid contract of service for a year (*c*).

(*a*) *Leroux* v. *Brown*, 12 C. B., 801, at pp. 818, 822.

(*b*) 11 East, 152; *Laythoarp* v. *Bryant*, 2 Bing., N. C., 735, at p. 744; *Ridgway* v. *Wharton*, 6 H. L. C., 238.

(*c*) *Rex* v. *Witnesham Inhabitants*, 4 N. & M., 447.

General and Yearly Hiring.

Where no time is limited, either expressly or by implication, for the duration of a contract of hiring and service, the hiring is considered a general hiring; and, in point of law, a hiring for a year (*a*). And this rule applies to all contracts of hiring and service, whether written or verbal, whether express or implied, and whatever the nature of the service (*b*).

The rule, however, is not inflexible, and does not apply where the contract contains stipulations inconsistent with the application of it (*c*). Nor does the rule apply where there has been a service, but no contract of hiring, and no circumstances from which a contract can be implied (*d*).

But where there has been a service for more than a year, and wages paid without any express contract of hiring, it may be presumed that such service was under a contract for a yearly hiring (*e*).

Also in cases where there has been clearly a contract, though not for any definite time, a yearly hiring may be inferred; and slight circumstances, such as an agreement to find clothes, will tend to strengthen such an inference (*f*).

But a general hiring will not be presumed to be a yearly hiring, where it is excluded by the terms of the contract; for instance, if either party is to be at liberty to determine the service at any time, the hiring will not be considered a yearly hiring (*g*). Nor if the hiring be expressly for less than a year, although done purposely to avoid the consequences of a yearly hiring (*f*). Nor if the master have not the entire control of the servant during the year, although he pay the servant yearly wages; as if the servant is to be at liberty, when not engaged for his master, to work for other people (*h*). If the agreement is to do work by the job, it cannot be considered a yearly hiring, although the job last more than a year (*i*). But if the hiring be for a year, a mere stipulation for payment by piece-work will not render it the less a yearly hiring (*k*). In a case where the hiring was at 3*s.* per week "all

(*a*) Smith, Mast. and Serv. (4th ed.), p. 84.
(*b*) *R.* v. *Worfield*, 5 T. R., 506; *Emmens* v. *Elderton*, 13 C. B., 495.
(*c*) *Baxter* v. *Nurse*, 6 M. & G., 935.
(*d*) *Beeston* v. *Collyer*, 4 Bing., 313.
(*e*) *Rex* v. *Lyth*, 5 T. R., 327; *Rex* v. *Long Whatton*, 5 T. R., 447; *Rex* v. *Pendleton*, 15 East, 449.
(*f*) Smith, Mast. and Serv. (4th ed.), p. 86.
(*g*) *Rex* v. *Great Bowden*, 7 B. & C., 249.
(*h*) Smith, Mast. and Serv. (4th ed.), p. 86.
(*i*) *R.* v. *Woodhurst*, 1 B. & Ald., 325.
(*k*) *King's Norton* v. *Cambden*, 2 Str., 1139.

the year round," with liberty to leave on a fortnight's notice, this was held to be a yearly hiring (*a*).

Where the hiring is a yearly one, it cannot in general be put an end to by either party until the end of the year. So that if a master wrongfully dismiss his servant during the year, the servant may maintain an Action against his master for such wrongful dismissal; and a Jury would, generally speaking, be justified in giving damages for full wages up to the end of the year for which the servant was hired. On the other hand, if a servant wrongfully quit his master's service, or is rightfully dismissed for misconduct during the year, such servant cannot recover any wages for the portion of the year during which he has served (*b*).

Where the only circumstances from which the intended duration of a contract of hiring and service can be inferred is the reservation of wages weekly, it must be taken to be a weekly hiring. But if there is anything in the contract of hiring to show that it is intended to be for a year, the reservation of weekly wages will not control it (*c*).

Service under the Crown.

It may be noted here that it is well established that servants of the Crown, civil as well as naval and military—except in special cases where it is expressly provided otherwise by law—hold their offices only during the pleasure of the Crown (*d*). Further, no engagement made by the Crown with any of its military or naval officers in respect of services, either present, past, or future, can be enforced in any court of law (*e*).

Death of Master.

All contracts of hiring and service are put an end to by the death of the master, and therefore the executors or administrators of the master can bring no Action to enforce the contract of service after his death (*f*). And it is the same in the case of a contract of service as farm bailiff: the contract is put an end to by the death of the master, unless the contrary be stipulated for by the terms of the contract (*g*).

Domestic or Menial Servants.

With regard to these there is a well-known rule founded on

(*a*) *R.* v. *Birdbrooke*, 4 T. R., 245.
(*b*) Smith, Mast. and Serv. (4th ed.), 91.
(*c*) Smith, Mast. & Serv. (4th ed.), 89.
(*d*) See *Dunn* v. *The Queen*, C. A. (1896), 1 Q. B., 116.
(*e*) *Mitchell* v. *The Queen*, C. A. (1896), 1 Q. B., 121 n.
(*f*) Williams on Executors (5th ed.), 757.
(*g*) *Farrow* v. *Wilson*, 38 L. J. C. P., 326.

custom, that their contract of service may be determined at any time by giving a month's warning, or paying a month's wages; and this although they may be hired at so much a year (*a*). There is no obligation in such a case to pay any board wages or to make any allowance for lodgings (*b*).

The term "domestic" or "menial" servants is now to be considered to apply to housekeepers, cooks, kitchen or scullery maids, still-room maids, parlourmaids, housemaids, laundry-maids, dairymaids, nurses, nurserymaids, butlers, valets, footmen, pages, coachmen, grooms, gardeners, huntsmen, &c. (*c*).

A governess does not come under the denomination of a domestic servant, although she live in the house (*d*).

Domestic servants are said in the text-books to be hired by the year, but modern usage has rendered this old *dictum* almost or quite nugatory, neither master nor servant being now required to give more than a month's notice.

Certain out-door servants, such as coachmen and gardeners, receive their wages weekly. The legal interpretation to be put upon this fact is not always quite clear. If the servant is a domestic servant within the category named above, it must generally be presumed that though the wages are weekly yet the notice will have to be the usual month (*e*).

"Month" in the hiring of servants means a calendar month —that is, a month of 30 days (*f*).

Though the employer may get rid of a servant without notice by paying a month's wages (or if the servant is already under notice, on paying the amount due for the unexpired part of the month), yet no corresponding privilege is vested in the servant: that is to say, a servant is not entitled to leave without notice on paying or tendering to the master a sum equivalent to the month's wages (*g*).

If therefore a servant should leave without warning, he or she not only forfeits all wages due since the last payment, but is liable to be sued by the master for damages. The measure of the damages would in ordinary cases be at the least all necessary expenses incurred in replacing the runaway.

If by giving the month's warning, or by paying the month's

(*a*) *Fawcett* v. *Cash*, 5 B. & Ad., 908; *Beeston* v. *Collyer*, 4 Bing., 313; *Williams* v. *Byrne*, 7 A. & E., 183; *Metzner* v. *Bolton*, 9 Ex., 519.
(*b*) *Gordon* v. *Potter*, 1 F. & F., 644.
(*c*) See *Nicholl* v. *Greaves*, 33 L. J. C. P., 259.
(*d*) *Todd* v. *Kerrick*, 8 Ex., 151.
(*e*) *Evans* v. *Roe*, L. R., 7 C. P., 138.
(*f*) *Simpson* v. *Margetson*, 11 Q. B., 27; *Gordon* v. *Potter*, 1 F. & F. 644; and see 13 & 14 Vict. c. 21, § 4.
(*g*) *Fewings* v. *Tisdal*, 1 Ex., 299.

wages, the contract of hiring is so determined, when the wages are payable quarterly the servant is entitled to a proportionate amount of wages for the time served.

Strange to say, the point of law remains to be settled as to what are the legal incidents of a domestic servant's first month of service. Some County Court Judges have held that it is strictly a month of trial, and that the servant can go off at the end of the month without any notice whatever; other Judges have held, however, that the first month is not a trial month, and that if a servant wishes to leave, the customary month's notice must be given to run from the day on which it is given.

All risk of inconvenience and unpleasantness will be got over if at the hiring it is expressly stipulated that the first month shall be one of trial, and that if either party is dissatisfied, notice is to be given at the end of the first fortnight that the engagement is to end on the completion of the first month (*a*).

A head gardener at £2 a week, who resided in a detached house belonging to his master and in the grounds, sued for a quarter's wages, but he was held to be a menial servant and entitled only to a month's warning (*b*).

Governesses and Tutors.

These cannot be considered menial or domestic servants, and cannot be discharged at a month's notice as a servant can, unless there is an express agreement or stipulation to that effect. If hired by the year, and no stipulation is made as to notice on leaving, they can only be legally dismissed at the end of the year. If dismissed at any other time they are entitled

(*a*) A case has come before a Divisional Court, on appeal from a decision of the Westminster County Court Judge, in which the question was raised whether a domestic servant is entitled by custom to give notice at any time in the first fortnight of her service, so as to enable her to leave it at the end of the first month. The County Court Judge held that there was no such custom, and that any such alleged custom would be unreasonable, and he accordingly gave judgment for the defendant in an action brought by the servant to recover a month's wages; whereupon the servant appealed. Their Lordships (Hawkins and Channell, J.J.) dismissed the appeal, as the issue (they said) was, as the case stood, one of fact, and they could not say that the custom alleged by the appellant had been sufficiently recognised to enable the Court to take notice of it; but they did not think such a custom would be unreasonable (*Moult* v. *Halliday*, Div. Ct. [1898] 1 Q.B. 125).

Since this decision, the Judge of the Lambeth County Court has held that the custom was proved by the evidence in a case before him, and gave judgment accordingly in favour of a maidservant who claimed a month's wages on leaving, after giving a fortnight's notice to leave at the end of the first month (*Edmunds* v. *Thornton*, reported in *Times*, Dec. 2, 1898).

(*b*) *Nowlan* v. *Ablett*, 2 C. M. & R., 54.

to a year's salary; but if dismissed for misconduct, they cannot recover their salary for the time they have served (*a*).

Servant's Liability to Master.

Every servant is bound to take the due and proper care of his master's property entrusted to him, and if guilty of gross negligence, whereby such property is injured, he will be liable to an Action at law (*b*). But he is not bound to preserve his master's property at all risks (*c*). A servant entrusted with money or goods will not be liable to his master if feloniously robbed of them (*d*).

A servant is also liable to an Action at the suit of his master, where a third person has brought an Action and recovered damages against the master for injuries sustained in consequence of the servant's negligence or misconduct (*e*).

An Action cannot be maintained against a servant for soliciting business from his late master's customers for himself, when his service is at an end, and he sets up on his own account. But if the servant solicit his master's customers whilst the relationship of master and servant subsists between them, he will be liable to an Action (*f*).

And where the bailiff of a "game farm" had copied from the master's order-book a list of names and addresses of the customers, and on leaving the employment used the list to solicit orders on his own account, it was held that there was an implied term of the contract of service not to use to the master's detriment information obtained in the course of the service, and that the ex-bailiff was liable in damages (*g*).

Discharging Servants.

The discharge of a hired servant may be justified at any time during service for such causes as the following:—

Incompetence (*h*), habitual negligence, or conduct calculated seriously to injure the master's business, wilful disobedience to lawful orders, gross moral misconduct, dishonesty, drunkenness, permanent disability from illness (*i*), and such-

(*a*) *Todd* v. *Kerrick*, 8 Ex., 151; 22 L. J., Ex., 1.
(*b*) *Countess of Salop* v. *Crompton*, Cro. Eliz., 777, 784.
(*c*) Bac., Abr., Mast. & Serv. (M. 1).
(*d*) *Walker* v. *Guarantee Association*, 18 Q. B., 277.
(*e*) *Green* v. *New River Co.*, 4 T. R., 589; 6 M. & G., 165.
(*f*) *Nichols* v. *Martin*, 2 Esp., 732.
(*g*) *Per* Hawkins, J., in *Robb* v. *Green*, L. R. [1895] 2 Q. B. 1; affirmed on appeal.
(*h*) *Cuckson* v. *Stones*, 28 L. J. Q. B., 25.
(*i*) *Harmer* v. *Cornelius*, 5 C. B. (N. S.), 236.

like (*a*). If an Action for wages or for wrongful dismissal is brought, such a defence should be specially pleaded.

If a servant rightfully discharged refuse to quit his master's premises, his master will be justified in turning him out by force. The more prudent course, however, will be to call in the aid of a constable, to see that no breach of the peace is committed. The constable could not assist in ejecting the discharged servant. It is for the master, with such assistance as he may require, to do this, using no more force than is absolutely necessary. Undue violence would be a ground for a charge of assault.

If a servant rob his master, he may be dismissed at once without notice and without wages; and this whether a month's notice was stipulated for or not; and the same in other cases of gross misconduct (*b*).

Where a servant was negligent, frequently absent when wanted, and often slept out at night, it was held that the master had a right to discharge him without warning (*c*). So where a servant requested leave of absence for a night to visit her mother who was ill, and her master refused leave and yet she went, it was held that she was lawfully dismissed for the disobedience (*d*).

On the important question of morality the law has been thus laid down by an Irish Judge :—"Can anyone doubt that chastity is an essential requisite in a female domestic servant? And can anyone doubt that the master or mistress of a family would be justified in dismissing without the usual month's notice a female domestic servant for unchaste conduct?" (*e*).

And similarly a man-servant found to be the father of a bastard child may be discharged by his master (*f*).

Where a servant of any sort is engaged on account of his professed skill or ability to perform certain duties, and turns out to be perfectly unskilful and incompetent to discharge the duties for which he was hired, the master will be justified in rescinding the contract and discharging the servant (*g*).

(*a*) See the numerous authorities upon the subject in Smith's Mast. and Serv. (4th ed.), 139 *et seq.*

(*b*) *Cunningham* v. *Fonblanque*, 6 C. & P., 49; *Spotswood* v. *Barrow*, 5 Ex., 110; 4 Bing., N. C., 638.

(*c*) *Robinson* v. *Hindman*, 3 Esp., 235.

(*d*) *Turner* v. *Mason*, 14 M. & W., 112.

(*e*) *Connors* v. *Justice*, 13 Ir. C. L. R., 451, 457.

(*f*) *Rex* v. *Welford*, Cald., 57.

(*g*) Smith, Mast. and Serv. (4th ed.), 151; and see *Harmer* v. *Cornelius*, 28 L. J. C. P., 85.

Careful discretion must be exercised by a master in taking the extreme step of dismissing a servant without notice. Unless the misconduct of the servant is very distinctly gross in fact, and is capable of very distinct proof by the mouth of at least one independent witness, it will be safer for the master to pay or tender the month's wages.

If a servant have done acts which are a good ground for dismissal, the master may justify under those acts, although not disclosed at the time (*a*).

If dismissed on justifiable grounds before the end of the quarter, or if he leaves before the end of the quarter, not having given the usual warning to his master, the servant forfeits the wages accruing since the expiration of the last quarter; as the wages are not payable till the end of the current quarter for services rendered during that quarter (*b*).

The only exception to this rule is where a servant enlists. In such a case he is entitled, on the order of the attesting Justice, to be paid a proportionate part of his wages up to date.

Wrongful Dismissal of Servants.

It is the duty of a master to retain the servant in his employ during the whole time for which he has hired him; and if he dismiss him before the expiration of that time without lawful cause, the servant may bring an Action against him for such wrongful dismissal (*c*).

A servant wrongfully dismissed may also bring an Action for wages. But if the servant intend to take this remedy, he (or she) should wait until the expiration of the period for which he agreed to serve, and then bring the Action; because, if he be a yearly servant, and his wages become due at Christmas, then, if he be dismissed in March and *immediately* sue his master for wages, he will only recover a portion calculated up to March; but by waiting until Christmas he may recover the whole year. If, however, he enter upon any other service during the interval, he will only recover of his former master the wages due up to the time of his entering upon such other service (*d*).

Giving "Characters" to Servants.

A master or mistress is under no legal obligation to give a servant a character (*e*). But if a character is given it must be

(*a*) *Spotswood* v. *Barrow*, 5 Ex., 110.
(*b*) See the cases cited in Baylis's Law of Domestic Servants.
(*c*) *Bracegirdle* v. *Heald*, 1 B. & Ald., 722; *Blogg* v. *Kent*, 6 Bing., 614.
(*d*) *Hochster* v. *De la Tour*, 2 E. & B., 678; *Avery* v. *Bowden*, 5 E. & B., 728. (*e*) *Per* Lord Kenyon, in *Carrol* v. *Bird*, 3 Esp., 201.

truthful, whether good or bad, or the employer will be liable to an Action, and if the character given be wilfully false, the giver may be convicted and sent to prison (see p. 79).

A *bonâ fide* character honestly given and in the belief that it is true is a privileged communication (*a*), even if it contain matter which is criminating and slanderous (*b*), and no Action can be maintained in respect of it.

But a character in which misstatements injurious to the servant or greatly exaggerated statements are wantonly and maliciously made is not privileged, and where there is evidence of expressed or implied malice the Judge cannot withdraw the case from the Jury (*c*).

Answers given to inquiries by persons interested as to the causes which have led to the dismissal of a servant are also privileged (*d*).

All facts ought to be disclosed which might be supposed fairly to weigh with or influence another in engaging or rejecting a servant; for the suppression of the truth is as unjustifiable as an untrue statement (*e*).

Where a lady having been asked for the character of her governess, and why she parted with her, stated that it was on account of her "incompetency, and not being ladylike nor good-tempered:" it was proved that the lady had twice favourably recommended her to other persons within the year that she served; and general evidence being given of the governess's competency, good temper, and lady-like manners; malice was considered to have been made out against the mistress; and the governess recovered damages for the defamation (*f*).

If a master knowingly give a false character of a servant to a person about to hire such servant, and the servant afterwards rob or injure his new master; the latter may, in an Action for the deceit, recover from the former master the damages he has sustained by reason of such false character having been given (*g*). And in addition, the former master will also, in general, be guilty of a misdemeanor (see p. 79) (*h*).

A wilfully false misrepresentation concerning the character

(*a*) *Per* Cockburn, C.J., in *Ward* v. *Harris*, at Exeter assizes, March 19, 1857; *Harrison* v. *Bush*, 5 E. & B., 344; *Gardner* v. *Slade*, 13 Q. B., 801.
(*b*) *Whitby* v. *Adams*, 15 C. B. (N. S.), 392.
(*c*) *Jackson* v. *Hopperton*, 16 C. B. (N. S.), 839; *Fryle* v. *Kinningsley*, 15 C. B., (N. S.), 422.
(*d*) *Manby* v. *Witt*, 18 C. B., 544.
(*e*) Baylis, Law of Domestic Servants.
(*f*) *Fountain* v. *Boodle*, 3 Q. B., 12.
(*g*) *Wilkin* v. *Read*, 15 C. B., 192.
(*h*) *R.* v. *Moah*, 27 L. J. M. C., 204.

of a person made with the intent that that person should obtain a situation, though not made in writing, would be a ground of Action to the person acting upon it even though no fraud or injury were intended (*a*).

Mutual Duty of Masters and Servants.

As regards the relations which should subsist between masters and servants, it is abundantly clear in point of law that the whole of a servant's working hours are at the disposal of the master to be dealt with as he thinks proper, and all lawful orders in respect of their employment must be obeyed. The master is to judge of the circumstances under which the servant's services are required, provided always that any command given must be a lawful command (*b*).

Servants must observe the strictest honesty in dealing with their master's property, and it is not to be presumed that any general discretion is vested in them as to appropriating "leavings" or "perquisites," for which latter it is advisable that distinct money payments should always be substituted.

Masters and mistresses are not entitled to make deductions from the wages of a servant, in respect of articles lost or damaged by the carelessness or misconduct of such servant, unless there has been an antecedent contract to that effect (*c*).

Wages are payable during temporary illness unless the engagement be lawfully discontinued or modified by consent (*d*).

If a servant has left an employer for a considerable period and made no claim for wages, the presumption will be that they have been paid (*e*).

Medical Attendance.

Masters and mistresses are not liable for medical attendance or medicine supplied to their servants unless they take the responsibility upon themselves by some overt act, such as sending for the doctor or for medicine, without the concurrence or without the knowledge of the servant; and it must be left to the humanity of every master to decide whether he will assist his servants in illness according to his capacity or not (*f*).

If a master is unable or unwilling to be responsible for the

(*a*) *Murray* v. *Mann*, 2 Ex., 538; *Watson* v. *Poulton*, 15 Jur., 1111, Ex. C. C. A., 538; *Gerhard* v. *Bates*, 2 E. & B., 476.

(*b*) *Turner* v. *Mason*, 14 M. & W., 112.

(*c*) *Le Loir* v. *Bristow*, 4 Camp., 134.

(*d*) *Rex* v. *Sudbrooke*, 1 Smith, Rep., 59; Dalton's Justice, c. 58; *Cuckson* v. *Stones*, 28 L. J. Q. B., 25.

(*e*) *Sellen* v. *Norman*, 4 C & P., 81.

(*f*) *Per* Rooke, J., in *Dennall* v. *Adney*, 3 B. & P., 254.

proper medical care of a servant, such servant has, when necessary, a right to be supported at the expense of the parish (*a*).

Masters and mistresses are not responsible for accidents occurring to domestic servants from the carelessness of fellow-servants or others, unless such accidents have arisen from their having knowingly employed grossly incompetent persons (*b*).

Servants' Livery.

As this is a subject which opens the door for many misunderstandings or disputes, employers should in all cases be very explicit in stating their intentions at the time of hiring. As a general rule clothes supplied to a servant belong to the master or mistress, but it is usual for a servant to be allowed to consider the clothes as his own after the stated period has elapsed for the clothes to remain in use.

Where a Plaintiff had been hired by the Defendant as a servant, at thirty guineas a year and a suit of clothes; and had, on entering the service, been provided with a suit of clothes; it was held that they did not become the servant's property until he had served a year (*c*).

Action by Master for Loss of Servant's Services.

A master having, by virtue of his contract for hiring, acquired a property in the labour and services of the servant, he may maintain an Action against a third person who deprives him of the services of such servant by enticing him away before the expiration of the hiring, or by beating, confining or disabling such servant (*d*), or for the seduction of any female servant (*e*).

In these cases the loss of service must be the natural and necessary consequences of the Defendant's proceedings, or the Action will fail (*f*).

Liability of Master for Negligence of Servant.

When a servant is employed by his master to drive, the master will be liable to any third party who, or whose property, may be injured through the negligent or careless driving of the servant (*g*). But if the servant, without his master's know-

(*a*) *Simmons* v. *Wilmot*, 3 Esp., 91.

(*b*) Baylis, Law of Domestic Servants.

(*c*) *Crocker* v. *Molineaux*, 3 C. & P., 470.

(*d*) *R.* v. *Daniel*, 6 Mod. 99; *Duel* v. *Harding*, Str., 595; *Gilbert* v. *Schwench*, 14 M. & W., 488; *Hodsell* v. *Stallebrass*, 11 A. & E., 301.

(*e*) *Fores* v. *Wilson*, Peake, 55; 11 East, 23; *Howard* v. *Crowther*, 8 M. & W., 601.

(*f*) *Harper* v. *Luffkin*, 7 B. & C., 387.

(*g*) *Jones* v. *Hart*, 2 Salk., 441; *North* v. *Smith*, 10 C. B. (N. S.), 57 *M'Manns* v. *Crickett*, 1 East, 106.

ledge or authority, take the carriage or horses for his own purpose, and drive against another person's carriage, or cause personal injury to others, his master will not be liable (*a*).

Nor will the master be liable if the driver or servant, after having driven his master out or home, take the horse and carriage upon a journey for a purpose unconnected with his master's business (*b*).

To render the master liable for the wrongful acts of his servant, the servant must, at the time he does the injury, be acting *bonâ fide* in the execution of his master's orders, and within the scope of his employment as a servant (*c*). And where a lavatory had been provided for the use of clerks, and one of them negligently left the tap running, so that water escaped and damaged the goods of the occupant of a room beneath, the clerk's master was held liable for the damage, the use of the lavatory being an incident to the employment of the clerk (*d*).

But the owner of a furnace whose workman had negligently caused a nuisance from smoke, and who was summoned under a statute by which criminal liability is imposed, was held not liable to conviction under the statute, because a master is not responsible for the criminal negligence of a servant (*e*).

How far Master is bound to Indemnify Servant.

It is the duty of every master to indemnify his servant from the consequences of doing anything in obedience to his master's orders, the servant at the time believing it to be lawful. For instance, if a servant, in obedience to his master's orders, commit a trespass, not knowing that he is doing any injury, he will be answerable for the trespass as well as his master; but he will be entitled to an Action against his master for the damages he may suffer; and, although the master also was ignorant that the act was unlawful, such master will nevertheless be deemed the principal offender (*f*).

But the master is not bound to indemnify the servant if the servant knew at the time the act was unlawful, for no servant is bound to obey his master's orders in such a case; and a master is not bound to indemnify his servant from damage arising from his acting contrary to his master's orders (*f*).

(*a*) *Jones* v. *Hart*, 2 Salk., 441; *North* v. *Smith*, 10 C. B. (N. S.), 572; *M'Manns* v. *Crickett*, 1, East, 106.

(*b*) *Mitchell* v. *Crasweller*, 22 L. J. C. P., 100; *Storey* v. *Ashton*, 38 L. J. Q. B., 223.

(*c*) *Joel* v. *Morison*, 6 C. & P., 501; *Croft* v. *Alison*, 4 B. & Ald., 590.

(*d*) *Ruddiman* v. *Smith*, 60 L. T., 708.

(*e*) *Chisholm* v. *Doulton*, 22 Q. B. D., 736; 58 L. J. M. C., 133.

(*f*) Smith, Mast. and Serv. (4th ed.), 233.

SECTION II.—EMPLOYER AND WORKMAN.

Employers' Liability for Accident to Workman.

At common law, a master is liable in damages in case of injury to his servant or workman by his own (*i.e.* the master's) negligence; and if the servant is employed by several persons who are in partnership, the partners are severally liable for the negligence of any one of them (*a*).

But according to the doctrine of "common employment" as laid down by the Judges, the master is not liable at common law when the injury has arisen to a workman from the negligence of a fellow-workman in the course of their common employment, unless the master has been negligent in employing an incompetent servant, through whose incompetency the injury was caused (*b*).

The maxim *volenti non fit injuria* applies generally to such an injury when received by a servant in the course of his work, so that if he voluntarily undertakes work when aware of its "nature" and of its "attendant risks," he cannot have damages for an injury resulting from those risks (*c*); but the maxim does not apply to a man who "is lawfully engaged in work, and is in danger of dismissal if he leaves his work," and therefore continues to work after asking the other person's servant "to take care" (*d*).

Special provision, however, has been made by Act of Parliament—in 1880, and again in 1897—to meet the case of workmen receiving injury in the course of employment in certain callings, and with the view—in the case of the Act passed in 1880—of meeting the difficulties arising out of the application of the doctrine of "common employment."

Employers' Liability Act, 1880.

By this Act (43 & 44 Vict. c. 42, § 1), where personal injury is caused to a workman—

(1) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer; or

(2) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or

(*a*) *Ashworth* v. *Stanwix*, 30 L. J. N. S., Q. B. D., 183.
(*b*) Smith, Law of Master and Servant.
(*c*) *Woodley* v. *Metropolitan District Railway Company*, L. R. 2 Ex. D., 384.
(*d*) *Thrussel* v. *Handyside*, L. R. 20 Q. B. D., 359.

(3) By reason of the negligence of any person in the service of the employer, to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed ; or

(4) By reason of the act or omission of any person in the service of the employer, done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf ; or

(5) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway—

the workman, or (if the injury results in death) the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

But a workman is not entitled (§ 2) to any right of compensation or remedy against the employer in the following cases :

(i) Under § 1, sub-section 1, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition ;

(ii) Under § 1, sub-section 4, unless the injury resulted from some impropriety or defect in the rules, by-laws, or instructions ;

(iii) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or some person superior to himself in the service of the employer, unless he was aware that the employer, or such superior, already knew of the said defect or negligence.

It has been decided, however, by the Court of Appeal that a workman, who voluntarily remains at work knowing the danger he runs, cannot recover damages under this Act of 1880, for injuries resulting from such source of danger (*a*).

But when a workman engaged in an employment not in itself dangerous is exposed to danger from an operation in another department over which he has no control, which danger has

(*a*) *Thomas* v. *Quartermaine*, 18 Q. B. D., 685 ; 57 L. T. R., 537.

been created or enhanced by the employer's negligence, the mere fact that he undertakes or continues in such employment with knowledge of the danger does not preclude him from recovering damages under the Act; and the question whether he has so undertaken the risk as to make the maxim *Volenti non fit injuria* apply is one of fact and not of law (*a*).

The amount of compensation recoverable is not to exceed the equivalent of three years' earnings (§ 3).

An Action for compensation will not be maintainable unless notice that injury has been sustained be given to the employer within six weeks, and the Action commenced within six months, from the occurrence of the accident causing the injury; or in case of death, within 12 months from time of death; unless, in case of death, the Judge shall be of opinion that there was reasonable excuse for such want of notice (§ 4).

Actions for compensation under the Act must be brought in a County Court, but may be removed by either Plaintiff or Defendant into a Superior Court (§ 6).

The notice of injury required by the Act must be in writing (*b*); and must give the name and address of the person injured, the cause of injury, and the date when it was sustained; and must be served on the employers, or one of them, by leaving it at their residence or place of business; or it may be sent by post if sent in a *registered* letter (§ 7).

Workmen's Compensation Act, 1897.

This new enactment (60 & 61 Vict. c. 37)—which came into operation on 1st July, 1898—provides that if, in any employment to which the Act applies, personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall be liable to pay compensation in accordance with the provisions of the Act—

Provided that the employer shall not be so liable in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed; and that when the injury has been caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in the Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation

(*a*) *Smith* v. *Baker and Sons*, H. L. (1891) App. Cas., 325.

(*b*) *Moyle* v. *Jenkins*, 51 L. J. Q. B. D 12; *Keen* v. *Millwall Dock Company*, 51 L. J. Q. B. D., 277.

under the Act, or take the same proceedings as were open to him before the commencement of the Act (§ 1).

The Act is to apply only to workmen employed on or in or about a railway, factory mine, quarry, or engineering work, or on, in, or about any building (*a*) which exceeds 30 feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power, is being used for the purpose of the construction, repair, or demolition thereof (§ 7).

If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer is on the whole not less favourable to the workmen and their dependants than the provisions of this Act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of the Act (§ 3).

Proceedings for the recovery of compensation under the Act shall not be maintainable unless notice of the accident be given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim be made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death (§ 2).

Where an employer contracts with any person for the execution of any work, and the employer would, if such work were executed by workmen immediately employed by him, be liable to pay compensation under the Act, the employer will be liable to pay to any workman employed in the execution of the work any compensation which is payable to the workman (whether under the Act or in respect of personal negligence or wilful act independently of the Act) by such contractor, or would be so payable if such contractor were an employer to whom the Act applies. But the employer will be entitled to

(*a*) By the Act, "factory" has the same meaning as in the Factory and Workshop Acts, 1878 to 1891, and also includes any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895, and every laundry worked by steam, water, or other mechanical power; and it has been decided on appeal that compensation was payable by the employers in the case of stevedores, who were injured while working for a steamship company in unloading a ship, and for that purpose were using a crane belonging to the dock company which had been hired by the employers (*Woodham's case*, reported in *Times* of Nov. 21, 1898, and *Law Journal*, Nov. 26, 1898).

be indemnified by any other person who would have been liable independently of this provision (§ 4).

Where an injury is caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may proceed either against that person for damages, or against his employer for compensation under the Act, but not against both, and if compensation be paid under the Act, the employer shall be entitled to be indemnified by such other person (§ 6).

The Act is not to apply to persons in the naval or military service of the Crown (§ 8).

The scale of compensation is to be as follows (§ 1) :—

Where death results from the injury, and (i) the deceased leaves dependants (*a*) wholly dependent upon his earnings, there shall be paid a sum equal to his earnings in the employment of the same employer during the three years immediately preceding the injury; or if not engaged for three years in such employment, 156 times his average weekly earnings during the period of his actual engagement; provided that in no case shall the amount exceed £300, or be less than £150, and any weekly payments made under the Act are to be deducted. (ii) Where deceased leaves only dependants who are in part dependent upon his earnings, there shall be paid such a sum as may be agreed upon, or determined by arbitration, as reasonable and proportionate to the injury to the dependants. But such sum must not exceed the limits indicated above. (iii) Where deceased leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding £10, are to be paid.

Where total or partial incapacity to work results from the injury, the compensation is to take the form of a weekly payment

---

(*a*) "Dependants" (according to the Act) means (i) in England and Ireland, such members of the workman's family specified in the Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93, popularly known as Lord Campbell's Act: see *ante*, p. 102, as were wholly or in part dependent upon the earnings of the workman at the time of his death; and (ii) in Scotland, such of the persons entitled according to the law of Scotland to sue the employer for damages or solatium in respect of the death of the workman, as were wholly or in part dependent upon the earnings of the workman at the time of his death (§ 7).

The members of a workman's family specified in the Fatal Accidents Act, 1846, are the wife, husband, parents, grand-parents, step-parent's children, grand-children, and step-children of the deceased.

Any question as to who is a "dependant," or as to the amount payable to each dependant, in default of agreement, is to be settled by arbitration under the Act (sched. I.).

during incapacity and dating from the end of the second week after the accident. The amount is not to exceed 50 per cent. of the workman's average weekly earnings during the twelve months immediately previous to the accident, or during the whole term of his then employment, if employed for less than that period: such weekly payment in no case to exceed £1.

Notice of Accidents Act, 1894.

The provisions of this Act (57 & 58 Vict. c. 28) requiring notice of accidents to workmen to be given to the Board of Trade, are restricted to the following employments: (1) Construction, use, working, or repair of any railway, tramroad, tramway, canal, bridge, tunnel, or other work authorised by any local or personal Act of Parliament; (2) use or working of any traction engine or other engine or machine worked by steam in the open air. (57 & 58 Vict. c. 28, § 2; amended by 58 & 59 Vict. c. 37, § 54.)

Where there occurs in any such employment any accident which causes to any person employed therein either loss of life or such bodily injury as to prevent him on any one of the three working days next after the occurrence of the accident from being employed for five hours on his ordinary work, his employer shall, as soon as possible and, in case of an accident not resulting in death, not later than six days after the occurrence of the accident, send to the Board of Trade notice in writing of the accident, specifying the time and place of its occurrence, its probable cause, the name and residence of any person killed or injured, the work on which any such person was employed at the time of the accident, and, in the case of an injury, the nature of the injury. Penalty on default of such notice, a fine not exceeding 40s. (§ 1).

The Board of Trade may, by order, direct that any other employment in which twenty persons or more, not being domestic servants, are employed by the same employer, and which in the Board's opinion is specially dangerous to life or limb, shall be subject to the provisions of the Act (§ 27).

In case of a serious accident, power is given to the Board of Trade to direct a formal investigation into its causes and circumstances, the investigation to be held in open court; and the court may order the costs and expenses of their investigation to be paid by any person summoned before it, if it finds that the accident was due to his act or default (§ 3).

Persuading Workmen to leave their Employers.

A conspiracy to obstruct an employer in carrying on his business, by persuading his workmen to leave him, in order to

induce him to make a change in the mode of carrying on his business, is an indictable offence (*a*).

Truck Acts.

By the Truck Act, 1831, the payment of wages *in goods* to any person engaged as an artificer in the trades mentioned in the Act is declared to be illegal, and the servant or workman is entitled to his wages *in money*. The master or employer cannot set off the price of articles supplied as wages. Any employer, or agent to an employer, who infringes the Act by paying or agreeing to pay wages *in goods*, is liable to a penalty of £10 for a first offence, £20 for a second offence, and £100 for a third. (1 & 2 Wm. IV., c. 37.)

The Act includes persons employed "in and about the manufacturing of iron or steel, or any parts, branches, or processes thereof; or in or about the working or getting of stone, slate, or clay, or in the making or preparing of salt, bricks, tiles, or quarries; or in or about the making or manufacturing of any kinds of nails, chains, rivets, anvils, vices, spades, shovels, screws, keys, locks, bolts, hinges, or any articles or hardwares made of iron or steel, or of iron and steel combined, or of any plated articles of cutlery, or of any goods or wares made of brass, tin, lead, pewter, or other metal, or of any japanned goods or wares whatsoever; or in or about the making, spinning, throwing, twisting, doubling, winding, weaving, combing, knitting, bleaching, dyeing, printing, or otherwise preparing of any kinds of woollen, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk manufactures whatsoever; or in or about any manufactures whatsoever made of the said last-mentioned materials, whether the same be or be not mixed with another; or in or about the making, or otherwise preparing, ornamenting, or finishing of any glass, porcelain, china, or earthenware whatsoever, or any parts, branches, or processes thereof, or any materials used in any of such last-mentioned trades or employments; or in or about the making or preparing of bone, thread, silk, or cotton lace; or of lace made of any mixed materials." But the Act does not apply to domestic or mercantile servants, or to agricultural servants (§ 20).

The full amount of all wages and earnings of labour in the hosiery manufacture shall be payable in the current coin of the realm, and not otherwise, without any deduction or stoppage; and all contracts to stop wages, and all contracts for frame-

(*a*) *Reg.* v. *Duffield*, 5 Cox, C. C., 404, 495 (n.).

rents and charges between employers and artificers shall be illegal, null, and void. (37 & 38 Vict. c. 48.)

No wages shall be paid by any employer, or by any person on his behalf, to any workman at or within any public-house, beer-shop, or place for the sale of spirits, wines, beer, cider, or other spirituous or fermented liquor, or any office, garden, or place belonging thereto or occupied therewith (save the wages payable by the proprietor of any premises whereon such liquors are sold to any workman *bonâ fide* employed by him). Penalty £10 for each offence. (46 & 47 Vict. c. 31.)

Truck Amendment Act, 1887.

By the Truck Amendment Act, 1887 (50 & 51 Vict. c. 46), the provisions of the Truck Act, 1831, are extended to any workman as defined in the Employers and Workmen Act, 1875 (see *post*, pp. 355*d*-6).

Whenever by agreement, custom, or otherwise a workman is entitled to receive in anticipation of the regular period of the payment of his wages an advance as part thereof, it shall not be lawful for the employer to withhold such advance or make any deduction in respect of such advance on account of poundage, discount, or interest, or any similar charge (§ 3).

Nothing in either Act is to render illegal a contract with a servant in husbandry for giving him food, drink (not being intoxicating), a cottage, or other allowances or privileges in addition to money wages as a remuneration for his services.

No employer shall, directly or indirectly, impose as a condition, express or implied, in or for the employment of any workman any terms as to the place at which, or the manner in which, or the person with whom, any wages or portion of wages paid to the workman are or is to be expended (§ 6).

No deduction shall be made from a workman's wages for sharpening or repairing tools, except by agreement not forming part of the condition of hiring.

Where deductions are made from the wages of any workmen for the education of children or in respect of medicine, medical attendance, or tools, once at least in every year the employer shall make out a correct account of the receipts and expenditure in respect of such deductions, to be audited by two auditors appointed by the workmen (§§ 8, 9).

A deduction from the wages of a workman for a subscription to a sick club is illegal under the Truck Act; but where a workwoman had acquiesced in the payment out of her wages of such a subscription, she was debarred from recovering back

the amounts so paid, the fund to which they were paid not being unlawful (*a*).

Where articles are made by a person at his own home, with the help only of members of his own family, the Truck Acts shall apply as if he were a workman, and the person who buys such articles from him were his employer. But this section shall apply only to articles under the value of five pounds knitted or otherwise manufactured of wools, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk, or of any combination thereof, or made or prepared of bone, thread, silk, or cotton lace, or of lace made of any mixed materials. (50 & 51 Vict. c. 46, § 10.)

Where an employer is charged with an offence under the Act, he shall be entitled, upon information laid by him, to have any other person whom he charges as the actual offender brought before the Court, and if he proves that the said other person had committed the offence without his knowledge, the said other person shall be summarily convicted of such offence, and the employer shall be exempt (§§ 11, 12).

A person engaged in the same trade or occupation as an employer charged with an offence shall not act as a Justice of the Peace in hearing and determining such charge (§ 15).

Truck Act, 1896.

The effect of this Act (59 & 60 Vict. c. 44), which came into operation on 1st January, 1897, will be found explained in the subjoined official memorandum relating to the several Truck Acts, which has been issued by the Home Office for the use of Her Majesty's Inspectors of Mines and Factories.

Memorandum on the Law of Truck.

The following are the terms of the Home Office memorandum referred to above :—

The law relating to truck is the same in all parts of the United Kingdom, and is contained in the following Acts of Parliament : "The Truck Act, 1831," "The Truck Amendment Act, 1887," "The Hosiery Manufacture (Wages) Act, 1874," "The Truck Act, 1896."

The provisions of these Acts have given rise to considerable difficulty of interpretation, and it is to be expected that until they can be revised and consolidated some difficulty may arise with respect to them.

The following principles will, however, aid in their interpretation.

In the first place, it is to be observed that what is forbidden in the Truck Act of 1831 is not the refusal or omission to pay wages, or any part of the wages, nor the making of any deduction from wages, but the payment of wages otherwise than in coin (*Redgrave* v. *Kelly*, 16th May,

(*a*) *Hewlett* v. *Allen*, H. L. (1894) W. N., 80. See also Ex parte *Cooper* 26 Ch. D., 693.

1889, Q.B.D.). From this it follows that fines are not prohibited by the Truck Act of 1831. The words of § 3, which enact that the "entire wages must be paid in coin," were at one time thought to mean that it was an offence to keep back from the workman any part of his wages. But subsequent decisions have shown that the true meaning of this section is only that whatever is paid as wages must be entirely paid in coin, so that mere deductions from wages, whether they are fair or unfair, do not offend against the Truck Act, 1831. Nor does this Act prevent an employer from supplying to a workman things to be used by him in his work, and deducting their value from his wages, provided they are supplied as a means of industry, not as the reward of it.

This point gave rise to some difficulty soon after the Truck Act was passed, but was settled by the case of *Archer* v. *James*, 31 L.J.Q.B. 153 (1862). In that case an employer had supplied a workman with gas and other materials for his labour, and deducted the value of the materials so supplied from his wages. It was argued that the supply of these materials, having been made in lieu of part of his wages, was a payment of wages in goods. But it was decided that regard must be had to the definition of wages in the Act as the "reward of labour," and that since they had not been given as a reward of labour, but only as a means of it, they had not been given as payment of wages. Unless this distinction were made, it was pointed out that the Act would be broken even by supplying the materials without any charge at all.

An illustration may make this clear. If a carpenter is paid for one day's work a wage of 5*s*. and a hammer, which he is to keep as his own, this would offend against the Truck Act, for the hammer, even though supplied to enable him to work, is yet a valuable article, and would in such a case be really a reward of labour. But if all that is done is to supply him with nails to be used up in the work, then, whether a charge were or were not made for them, they could in no sense be said to be paid as a reward of labour, but only as a means of it. In like manner, if a workman spoils a piece of cloth, and is obliged to take it, and be fined its value, the piece of cloth is given to him instead of so much wages, and is thus a reward of labour, paid in goods, and therefore illegal (*Smith* v. *Walton* L.R. 3 C.P.D. 109). Of course the Truck Acts do not forbid a mere gift; it is only when the gift is in substance a part payment of wages that it is forbidden.

The Truck Act of 1831, § 5, also forbids the recovery by the employer of the price of any goods bought by the workman from the employer, or at a shop in which he is interested. It does not penalise the dealing at the shop, which the workman may do if he likes, but it makes the money due irrecoverable. Hence workmen can only deal at such shops for cash.

There is nothing in this Act to prohibit an employer from selling goods or materials of any sort to his employés for cash, provided the sale is quite free, and that the purchase is not made in pursuance of any agreement with the workman as a condition of employing him, or under any threat of dismissing him. But such goods must not be delivered as payment of wages, nor must the wages be deducted in respect of them (*Wilson* v. *Cookson*, 32 L.J.C.P. 177); the workman must handle the whole of his wages in cash, except such deductions as are allowed by the Acts.

Complaints are sometimes made that foremen or others compel workmen to purchase watches or other things out of their wages, under threat of dismissal if they refuse. Such action is illegal; if a workman is dismissed for refusing to purchase the article, then the persons who dismiss him are liable to criminal proceedings under § 6 of the Act of 1887.

Certain exceptions are made to the above rules by § 23 of the Truck Act, 1831, which sufficiently speaks for itself, and by the Truck Amendment Act, 1887, § 8, no stipulation can be made in a contract of hiring for deductions for sharpening or repairing tools.

Not only does the Act prohibit the payment of wages in goods, but it also prohibits the imposition upon a workman, either by his employer, or by his employer's foreman, or agent, of any condition as to the way in which he shall spend his wages (Truck Act, 1831, 2, and Truck Amendment Act, 1887, § 6). The result of the judgment of the House of Lords in *Hewlett* v. *Allen* (L.R. Appeal Cases, 1894, 383) is that as a general rule a condition that a workman shall belong to a benefit society is not prohibited by the Truck Acts, and that a payment authorised or acquiesced in by him of the subscriptions by means of a deduction from his wages is not illegal.

It is further to be observed that this Act embraces all persons engaged in manual labour, except domestic servants. In determining whether a person is a workman it is necessary to look, not merely at each detail that he does, but to consider the general scope of his employment. Thus clerks, though in a sense their labour is partly manual, are not within the Acts. Nor, again, is an omnibus conductor (*Morgan* v. *General Omnibus Company*, 13 Q.B D. 832), nor a shopman engaged in selling goods. But a shop porter would be. This, not because a shopman does not sometimes do manual labour in pulling down goods from the shelves and measuring them, but because in substance his labour is considered as constituting him rather a merchant than a manual labourer, and in each case the main scope of his employment is to be taken as the test in determining whether or not he is a manual labourer (*Jackson* v. *Hill*, 13 Q.B.D. 618). Agricultural labourers are under special provisions by the Act of 1887, § 4.

The Acts apply to colliers, in addition to the clauses of the Mines Acts affecting check-weighing, but as a rule deductions under § 12 of the Coal Mines Regulation Act of 1887 are not really deductions from earned wages at all, but deductions from weights made in order to arrive at or compute wages, and hence such deductions will not offend against the Truck Acts, but their lawfulness or otherwise depends upon the Coal Mines Regulation Acts.

Persons engaged in the hosiery manufacture are under a special Act prohibiting deductions for frame rents and similar charges. This is in addition to their right to protection under the other Truck Acts.

Women, young persons, and children are also, under the Employers and Workmen Act, 1875, protected from fines for absence or leaving work, except to the amount of damage which the employer may have sustained (*a*). This is in substance extended to all workmen by the Truck Act, 1896.

It is not only the mere employer of a workman who is liable to punishment for illegally paying a workman in goods or supplying goods to him, but also all masters, bailiffs, foremen, managers, clerks, and other persons employed in superintending his labour. Goods supplied to a workman

(*a*) Section 11 of the Employers and Workmen Act, 1875, enacts as follows:—In the case of a child, young person, or woman, subject to the provisions of the Factory Acts, 1833 to 1874, any forfeiture on the ground of absence or leaving work shall not be deducted from or set off against a claim for wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work.

by those persons in payment of his labour do not constitute a valid payment of his wages (Truck Act, 1831, § 25).

Inasmuch as the older Truck Acts left untouched the power of the employer to inflict unlimited fines, or to make unlimited deductions in respect of bad work, or for materials to be used as a means of the workman's work, it was thought expedient to restrict and regulate this power, and, therefore, by the Truck Act of 1896, it was provided that such fines and deductions for negligent work, or materials supplied, should be prohibited except under stringent conditions.

The provisions as to fines are as follows :—

(1) No money shall be deducted from wages or payment made by the workman, for or in respect of any fine, unless the terms are contained in a written contract signed by the workman, or else contained in a notice always kept in some place where it may be easily seen, read, and copied.

It is to be observed here, that this section makes not only the deduction illegal, but the payment by the workman also illegal, and that the notice must be placed in a position in which it can be easily seen, read, and copied by every one affected by it. It is open to the employer to change the notice from time to time, but such change would only affect future employment, respecting which at the time of the notice there was no existing contract.

(2) The fines can only be fair and reasonable, and cannot be imposed except in respect of some acts reasonably likely to cause injury to the employer's business.

(3) At the time when any deduction or payment is made in respect of any fine, particulars of it must be supplied in writing, otherwise an offence against the Act has been committed.

Deductions for bad or negligent work are under restrictions very similar to those imposed in the case of fines.

Deductions for materials supplied are also under similar restrictions. They must not exceed the fair value of the article supplied; by this is meant, in substance, that employers can only charge the workmen for such materials at cost price. It is not possible to lay down any definition of cost price which will meet every imaginable case, but what is intended is that the price shall be what it has actually cost to supply them, all reasonable expenses being taken into consideration; and that the employer shall not make any profit whatever out of the sale of materials to the workmen, except such incidental advantage as he may legitimately obtain by the use of proper materials in his business.

It is to be noted that—

(1) Not only is it an offence to make an illegal deduction, or receive an illegal payment, but also to make any contract for such deduction or payment. If, therefore, an employer posts a notice embodying excessive fines or other illegal deductions, and persons work under it, an offence will have been committed, although no illegal fine or other deduction may actually have been enforced.

(2) A limitation of time, six months for taking civil proceedings, is imposed by the Act, whereas in the other Truck Acts no such limit is fixed.

Under former Truck Acts a workman who had improperly been paid part of his wages in goods, might keep the goods and sue for the money. This is still the case under the old Truck Acts. Under the Truck Act of 1896, however, that is to say, in any case where a fine, or deduction for fines or for bad work, or materials supplied, is made, the workman who has consented to it, can only recover the excess over what would have been a fair deduction. Under this Act, therefore, a workman is not entitled to go on for years, knowingly submitting to excessive deductions, and

then claim to have them all repaid. He can only recover the amount by which they are held to be excessive.

Provision is made in this Act for production of any contracts involving fines or deductions for materials or bad work to the Inspectors, and giving copies to workmen. It is also enacted that a register shall be kept of all fines. This is an important provision, and it will be the Inspector's duty from time to time to look at such registers, and see that the fines and deductions therein do not appear excessive.

Summary penal proceedings under the Summary Jurisdiction Acts must be taken within six months of the offence.

No payment illegal under the older Truck Act is legalised by the Act of 1896.

The Inspectors are charged with the duty of seeing that the Truck Acts are not infringed in all factories, mines, and workshops inspected by them. It is desirable that prosecutions for contraventions of those Acts should be instituted by them.

In conclusion, it may be remarked that the Truck Acts are for the protection of the workmen, especially the more ignorant or weak among them. It is not intended that the Inspectors shall intervene in cases where it is quite clear that the workpeople are not in any way subject to any compulsion, and where they are receiving full value for their money. On the other hand, whenever a case of real hardship or compulsion is discovered, even though small, the Inspectors should not hesitate, first, to endeavour to induce employers to rectify any abuse that is complained of, or if they refuse, to take steps to compel them to obey the law.

Hours of Labour of Railway Servants.

By the Railway Regulation Act, 1893 (56 & 57 Vict. c. 29), the Board of Trade are empowered to compel a railway company to furnish a schedule of the hours of work of its servants on the line when it is represented that the hours are excessive. Upon failure to supply the schedule, the Board may refer the matter to the Railway Commissioners, who may deal with it so as to bring the hours of work within reasonable limits.

Disputes between Employers and Workmen.

Under the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), disputes between employers and workmen may be determined by Courts of Summary Jurisdiction where the amount claimed does not exceed £10; and County Courts, also, have jurisdiction to adjust claims between employers and workmen, to award damages for breach of contract, and to order the performance of contracts.

Under this Act, "workman" does not include a domestic or menial servant, but means any person who being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under or over twenty-one, contracts with an employer "personally to execute" any work or labour (§ 10).

It has been decided that omnibus or tramway conductors are outside the provisions of the Act (*a*).

No action will lie against an official or other member of a trade union for procuring the dismissal from their employment of non-union workmen in the same trade, unless such dismissal is obtained by inducing the employer to break his contract with the workman (*b*).

In case of strikes or lock-outs, "peaceful picketing" by the workmen concerned is allowable by law. An Act of 1875 (38 & 39 Vict. c. 86), which declared that it should be unlawful, not only to use violence or intimidation, but for any person to watch or beset the house or place of work of another person, "with a view to compel him to abstain from doing or to do any act which such other person has a legal right to do or to abstain from doing," provided also that "attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section" (§ 7).

Infringement of this section renders an offender liable to a penalty of £20, or to imprisonment for three months, with or without hard labour.

(*a*) *Morgan* v. *London General Omnibus Company*, L.R. 13 Q.B.D., 832.

(*b*) This was established by the case of *Flood* (appellant) v. *Allen and Taylor* (respondents), on appeal to the House of Lords (H. L. (E.) [1898] A. C. 1)—the decision in which has been much discussed. The appellant was the secretary of a trade union, who had notified to the respondents' employer that the members of the union refused to work with them, and would go out on strike if they were continued in the same employ. Thereupon the respondents were discharged by the employer, but without any breach of contract on the latter's part. Upon the respondents bringing an action against Flood, the jury found that he had acted "maliciously," and he was held liable in damages, this decision being affirmed by the Court of Appeal. The House of Lords, however, decided that the appellant, not having done any unlawful act, was not liable in damages, even though his action was oppressive and inimical to the respondents, no ground of an action at law arising merely because a man's motive in doing an act not unlawful in itself is not a good one in morals.

It should be noted that no exercise by the appellant of coercion or intimidation towards the respondents was established, nor was it shown that he had induced the respondents' employer to do any unlawful act to their injury: the case being, in this latter respect, distinguished from *Temperton* v. *Russell* (C. A. 1893, 1 Q. B. 175), where certain workmen, members of a trade union—who had induced an employer to break his contract with another workman (the plaintiff), although only with the object of compelling him to adhere to the rules of the union—were held liable in damages.

Arbitration between Masters and Workmen.

By the Conciliation Act, 1896 (59 & 60 Vict. c. 30), the enactment known as the Arbitration (Masters and Workmen) Act, 1872 (35 & 36 Vict. c. 46), was repealed, and new powers given to the Board of Trade for the settlement of trade disputes.

Where a difference exists between employers and workmen, or between different classes of workmen, the Board of Trade are now authorised (i) to inquire into the causes and circumstances of the difference; (ii) to take steps for the purpose of enabling the parties to meet together with a view to the amicable settlement of the difference; (iii) on the application of employers or workmen interested, to appoint a person or persons to act as conciliator or as a board of conciliation; (iv) on the application of both parties to the difference, to appoint an arbitrator.

If a settlement of the difference is effected, a memorandum of the terms is to be drawn up and signed by the parties.

Factory and Workshop Acts, 1878 to 1895.

These Acts contain elaborate provisions for the regulation, and ensuring the sanitary condition, of factories and workshops; also as to fencing of dangerous machinery, hours of employment, employment of children, young persons, and women, the education of children, &c. (41 & 42 Vict. c. 16; 46 & 47 Vict. c. 53; 52 & 53 Vict. c. 62; 54 & 55 Vict. c. 75.; 58 & 59 Vict. c. 37.)

"Child" in the Acts means a person under the age of fourteen; "young person," a person of the age of fourteen and under the age of eighteen years; "woman," a woman of eighteen years of age and upwards.

A child under the age of eleven shall not be employed in a factory or workshop; and no child, young person, or woman shall (unless specially excepted) be employed on Sunday (54 & 55 Vict. c. 75, §§ 18, 21). And an occupier of a factory or workshop shall not knowingly allow a woman to be employed therein within four weeks after childbirth (§ 17).

By the Act of 1895 (58 & 59 Vict. c. 37), which came into operation on 1st January, 1896, a factory or workshop shall be deemed to be so overcrowded as to be dangerous or injurious to health, if the number of the cubic feet of space in any room therein bears to the number of persons employed at once in the room a proportion less than 250, or during any period of overtime, 400 feet of space to every person, except in those cases where the Secretary of State shall by order substitute higher figures (§ 1).

Accidents in Factories or Workshops.

By the Act of 1895, also, where there occurs in a factory or workshop any accident which either causes loss of life to a person employed in the factory or the workshop; or (ii) causes to any person employed in the factory or workshop such bodily injury as to prevent him on any one of the next three working days from being employed for five hours on his ordinary work, written notice shall forthwith be sent to the inspector for the district; and if the accident causes loss of life, or is produced either by machinery moved by steam, water, or other mechanical power, or through a vat, pan, or other structure filled with hot liquid or molten metal or other substance, or by explosion or escape of gas, steam, or metal, notice shall forthwith be sent to the certifying surgeon of the district (§ 18).

Where a death has occurred by accident in any factory or workshop, the coroner shall adjourn the inquest, unless an inspector or some person on behalf of a Secretary of State is present to watch the proceedings; but where the accident has not occasioned the death of more than one person, and the coroner has sent to the inspector notice of the inquest, it shall not be imperative on him to adjourn the inquest if the majority of the jury think it unnecessary (§ 19).

Laundries.

By the same Act (§ 22), the following (amongst other provisions) are to apply to any laundry carried on by way of trade or for purpose of gain:—

The period of employment, exclusive of meal hours and absence from work, shall not exceed for children, ten hours, for young persons, twelve hours, for women, fourteen hours, in any consecutive twenty-four hours; nor a total for children of thirty hours, for young persons and women of sixty hours, in any one week, in addition to such overtime as may be allowed in the case of women. A child or young person or woman may not be employed continuously for more than five hours without an interval of half an hour for a meal.

The same holidays are to be allowed as under the Factories and Workshops Acts. These Acts require the occupier of a factory or workshop (unless specially excepted) to allow as holidays to every child, young person, and woman, Christmas Day, either Good Friday or the next following Bank Holiday, and in addition eight half-holidays, one half of which are to be between 15th March and 1st October in every year.

SECTION III.—MASTER AND APPRENTICE.

The Contract of Apprenticeship.

The contract of apprenticeship is made by deed only (hence the usual expression of an apprentice's "indenture"), whereby one person is bound to teach another a trade or calling, and the latter is bound to learn it and to serve as an apprentice for the term of the indenture.

Apprenticeship indentures may be dissolved by effluxion of time, or by the apprentice coming of age. At the expiration of the term for which the apprentice was bound the contract of apprenticeship ceases. But if the apprentice has absented himself from his master's service, Justices of the Peace are empowered to order him to serve out the absent time, or make satisfaction for it; and in default to commit him to prison. But if the apprentice has served 7 years, he cannot be compelled to serve longer.

By the mutual consent of all the parties to the indenture, it may be cancelled or given up: and there is then an end of the apprenticeship (*a*).

The indenture is dissolved by the death of either master or apprentice (*b*). But where the apprentice is bound to two masters, on the death of one he becomes the apprentice of the survivor (*c*). By the custom of London, it appears that in the event of the master's death, the executor must put the apprentice to another master (*d*).

The indentures may also be cancelled by order of Justices on complaint and proof of wilful misconduct either on the part of apprentice or master, or of the wilful disobedience or misbehaviour of the apprentice.

If the apprentice be discharged by the Justices, they may order the master to refund all or part of the premium: and in default, may levy the amount by distress; and if the master's goods are insufficient, such master may be imprisoned for not exceeding 3 months.

Misconduct of Apprentices.

Apprentices in any trade, guilty of any misdemeanor, miscarriage, or ill-behaviour in their master's service, are liable to imprisonment with hard labour, not exceeding 3 months; or to an abatement of wages.

(*a*) Burr., 562, 766.
(*b*) *R.* v. *Peck*, 1 Salk., 68.
(*c*) *R.* v. *St. Martin*, 1 Harr. & W., 69.
(*d*) Pulling, Laws of London, 482; Bohun, Priv. Lon., 339; *Bowchier* v. *Coster*, 1 Keb., 250.

Apprentices absenting themselves (where premium under £10) before the apprenticeship expires, must make satisfaction for absent time, such satisfaction to be determined by Justices; in default, imprisonment not exceeding 3 months.

Breaches of covenant on the part of the apprentice cannot be set up in answer to an Action against the master for breach of his covenants (*a*). Neither is misconduct on the part of the apprentice any defence to an Action against the master for a breach of his covenant to instruct and maintain the apprentice (*b*). But in an Action against the master for not teaching and providing for the apprentice, it is a good defence to say that he quitted the service without leave (*c*). And to an Action by the master for breach of covenant on the part of the apprentice, it is a good defence that the apprentice was prevented by the act of God (as permanent illness) from serving (*d*).

For misusage, refusal of necessary provisions, cruelty, or other ill-treatment, Justices may order the apprentice to be discharged, and the premium to be refunded and levied by distress; in default of distress, imprisonment not exceeding two months.

Other Contracts of Service by Persons under Twenty-one.

As regards contracts of service by infants (*i.e.*, persons under 21), if unilateral (or one-sided), or not beneficial to the infant, the master cannot enforce them. An infant is incapable of contracting himself out of his acquired rights, or of entering into an obligation subjecting himself to a penalty (*e*).

A contract of service between an infant workman or artificer and an employer, binding the infant to serve for a certain term at certain wages, but reserving power to the master to stop the work and the wages whenever the master chooses to do so, is an inequitable and unfair contract, and therefore wholly void; and such a contract cannot be enforced by a master against an infant who absents himself from such service (*f*).

Dangerous Performances by Children.

The Act of 1879 on this subject (which fixed the limit of age at 14 for both boys and girls) has been amended by an Act of 1897; and it is now provided that any person causing a male young person under the age of 16, or female young

(*a*) *Winstone* v. *Linn*, 1 B. & C., 460.
(*b*) *Phillips* v. *Clift*, 28 L. J. Ex., 153.
(*c*) *Hughes* v. *Humphreys*, 6 B. & C., 680.
(*d*) *Boast* v. *Firth*, 38 L. J. C. P., 1.
(*e*) Co., Litt., 172 (a.).
(*f*) *Reg.* v. *Lord*, 12 Q. B., 757.

person under the age of 18, to take part in any public exhibition or performance whereby, in the opinion of a Court of Summary Jurisdiction, the life or limbs of such young performer shall be endangered, and also the parent or guardian of such young performer who shall aid or abet the same, will severally be liable to a penalty of £10; and if any actual bodily harm happens to any such performer in the course of such performance, the employer will be liable to be indicted, as well as to make compensation to the performer to the amount of £20.

Except where an accident causing actual bodily harm occurs to any child or young person, no prosecution or other proceeding is to be instituted for an offence under the Acts, without the consent in writing of the chief officer of police of the locality. (42 & 43 Vict. c. 34; 60 & 61 Vict. c. 52.)

Chimney Sweepers' Apprentices.

Any person compelling or knowingly allowing any person under 21 to ascend or descend a chimney, or enter a flue for the purpose of sweeping, cleaning, or scouring the same, or for extinguishing fire, is liable to a penalty of not less than £5, nor more than £10, or not exceeding 6 months' imprisonment, with hard labour. (3 & 4 Vict. c. 85.)

Children under 10 years of age are not to be employed in any way in the trade or business. Chimney-sweepers entering houses to sweep chimneys are not to bring with them persons under 16 years of age; if they do they are liable to a penalty not exceeding £5. (27 & 28 Vict. c. 37.)

Agricultural Gangs.

No child under the age of eight years may be employed in an agricultural gang, and no females may be employed in the same gang with males. No female shall be employed in any gang under any male gang-master, unless a female licensed to act as gang-mistress is also present with that gang. And any gang-master employing any child, young person, or woman, in contravention of the above, and any occupier of land on which such employment takes place, unless he proves that it took place without his knowledge, shall respectively be liable to a penalty not exceeding 20*s.* for each person so employed.

No person is to act as a gang-master unless he has obtained a licence (costing 1s. and renewable every six months) from Justices at petty sessions. For acting without a licence the penalty is 20*s.* a day, and no licence is to be granted to dealers in beer, spirits, &c. The distance the children may travel on

foot must be stated on the licence. (30 & 31 Vict. c. 130, §§ 4—9; 36 & 37 Vict. c. 67, § 16.)

Children under eight years of age are not to be employed in agricultural work, except by the parent of such child, on land in such parent's own occupation. (36 & 37 Vict. c. 67, § 5.)

No child is to be employed unless its parent holds a certificate that it has completed a certain number of school attendances during the 12 months immediately preceding the month in which the certificate is issued. Under 10 years of age, 250 attendances; over 10 years of age, 150 attendances. (36 & 37 Vict. c. 67, § 6.)

Working Hours in Shops.

As regards children, these are regulated by an Act of 1892, which provides that no young person (that is, a person under 18) may be employed in or about a shop for more than 74 hours, including meal times, in a week, or to the knowledge of his employer be employed in or about a shop having been previously on the same day employed in any factory or workshop for the number of hours permitted by the Factory and Workshop Act, 1871, or for a longer period than will complete such number of hours. (55 & 56 Vict. c. 62, § 3.)

In every shop in which a young person is employed a notice shall be kept exhibited by the employer in a conspicuous place referring to the provisions of the Act and stating the number of hours in the week during which a young person may lawfully be employed in that shop (§ 4).

Where any young person is employed in or about a shop contrary to the provisions of the Act, the employer shall be liable to a fine not exceeding £1 for each person so employed, but if the employer proves to the satisfaction of the court that he has used due diligence to enforce the execution of the Act, and that some other person has committed the offence in question without his knowledge or connivance, the other person will be liable, and the employer exempt (§§ 5, 6).

"Shop" means retail and wholesale shops, markets, stalls, and warehouses in which assistants are employed for hire, and includes licensed public-houses and refreshment houses; but the Act is not to apply to a shop where the only persons employed are members of the same family, dwelling in the building, or to members of the employer's family so dwelling, or to any person wholly employed as a domestic servant (§§ 9, 10).

If an employer fails to keep exhibited the notice required under § 4 (see above) he will be liable to a fine not exceeding 40*s*. (58 Vict. c. 5.)

SECTION IV.—FRIENDLY SOCIETIES.

By an Act of 1896 (59 & 60 Vict. c. 15), coming into operation on 1st January, 1897, the law relating to friendly societies was amended and consolidated, the previous Acts regulating such societies being in large measure repealed.

Five classes of societies may be registered under the Act—namely: (1) Friendly societies; (2) cattle insurance societies; (3) benevolent societies; (4) working-men's clubs; and (5) societies specially authorised by the Treasury: and no society can be registered which does not consist of seven persons at least (§§ 8, 9).

Although a member may (unless restricted by the rules of a particular society) belong to more friendly societies than one, he cannot assure to himself in the several societies collectively more than £200 in all, or an annuity of more than £50 (§ 41).

Insurances or payments receivable on the death of children—that is, burial insurances—are limited (whether in one or more societies) to £6 for a child under five years of age, or £10 under ten years; and for the enforcement of this restriction a special procedure is imposed in regard to the certificates of death of children so insured (§§ 62-67).

By another Act of 1896 (59 & 60 Vict. c. 26) the enactments relating to friendly societies and industrial assurance companies which receive contributions and premiums by means of collectors, have been consolidated, and special provision made for the administration and management of such societies and companies; it being enacted (amongst other things) that no collector may become a member of the committee of management, or vote or take part in the proceedings of a general meeting. The provisions of §§ 62-67 of the Friendly Societies Act, 1896 (referred to above, in last preceding paragraph) are to extend also to industrial assurance companies. The Act came into operation on 1st January, 1897.

SECTION V.—INDUSTRIAL AND PROVIDENT SOCIETIES.

Industrial and Provident Societies are now regulated by an Act of 1893, which was passed to consolidate and amend the law upon the subject, and came into operation on 1st January, 1894 (56 & 57 Vict. c. 39).

Every incorporated society existing at the passing of the Act which had been registered or certified under any Act

relating to industrial and provident societies shall be deemed to be a society registered under the new Act, and its rules shall, so far as not contrary to any express provision of the Act, continue in force until altered or rescinded (§ 3).

A society which may be registered under the Act is a society for carrying on any industries, businesses, or trades specified in or authorised by its rules, whether wholesale or retail, and including dealings of any description with land. Provided that (i) no member other than a registered society shall have or claim any interest in the shares of the society exceeding £200, and (ii) in regard to the business of banking, the society shall be subject to the provisions of the Act (§ 4).

Annual returns of accounts, &c., are to be made to the Registrar of Friendly Societies (§ 14).

No registered society which has any withdrawable share capital shall carry on the business of banking; but the taking deposits of not more than 10s. in any one payment, nor more than £20 for any one depositor, payable on not less than two days' notice, is not to be deemed "banking" (§ 19).

No society can be registered under the Act which does not consist of seven persons at least (§ 5).

The Registrars of Friendly Societies are to be the Registrars of Industrial and Provident Societies under the Act (§ 79).

SECTION VI.—BUILDING SOCIETIES.

By the Building Societies Act, 1874 (37 & 38 Vict. c. 42), the law relating to Building Societies was consolidated and amended; and further provision for the regulation of such societies has since been made by Acts passed in 1875, 1877, and 1884, and by the Building Societies Act, 1894 (57 & 58 Vict. c. 47), by which several important changes in the law have been made.

On the expiration of two years from the passing of the Act of 1894 (25th August, 1894) the Building Societies Act, 1836, shall be repealed as to all societies certified thereunder after 1856. (57 & 58 Vict. c. 47, § 25.)

Limitation of Liability of Members.

The liability of members of any society under the Acts in respect of any share upon which no advance has been made is to be limited to the amount actually paid or in arrear upon such share; and as to any share upon which an advance has been made, the limit extends to the amount payable thereon under

any mortgage or other security, or under the rules of the society. (37 & 38 Vict. c. 42, § 14.)

As to Borrowing of Money by Societies.

1. Any society under the Act may receive deposits or loans at interest, within the limits in this section provided, from the members or other persons, or from corporate bodies, joint-stock companies, or from any terminating building society, to be applied to the purposes of the society.

2. In a permanent society the total amount so received on deposit or loan, and not repaid by the society, shall not at any time exceed two-thirds of the amount for the time being secured to the society by mortgages from its members.

3. In a terminating society the total amount so received and not repaid may either be a sum not exceeding such two-thirds as aforesaid, or a sum not exceeding 12 months' subscriptions on the shares for the time being in force.

4. Any deposits with, or loans to, a society under the Act, made before the commencement of the Act in accordance with its certified rules, are hereby declared to be valid and binding on the society, but no further deposits or loans shall be received by such society except within the limits hereby provided.

5. Every deposit book, or acknowledgment, or security of any kind given for a deposit or loan by a society shall have printed or written therein or thereon the whole of the 14th and 15th sections of the Act. (37 & 38 Vict. c. 42, § 15.)

Prohibition of Balloting for Advances.

A society established after the passing of the Building Societies Act, 1894, shall not cause or permit the applicants for advances to ballot for precedence, or in any way make the granting of an advance depend on any chance or lot; and where the rules of a society established before the passing of the Act provide that advances may be balloted for, the society may, by a majority of its members present or voting at a meeting called for the purpose, make other provision in lieu thereof. (57 & 58 Vict. c. 47, § 12.)

Advances Not to be Made on Second Mortgage.

A society shall not advance money on the security of any freehold, copyhold, or leasehold estate which is subject to a prior mortgage, unless the prior mortgage is in favour of the society making the advance; but this provision is not to apply to any society in Scotland or Ireland which was at the passing of the Act of 1894 authorised by the rules to make advances

upon second mortgages. And if any advance is made in contravention of this section, the directors of the society who authorised the advance shall be jointly and severally liable for any loss on the advance occasioned to the society. (57 & 58 Vict. c. 47, § 13.)

Death of Members or Depositors Intestate.

If any member or depositor, having in the funds of the society a sum not exceeding £50, die intestate, the amount due may be paid to the person who shall appear to the directors or committee of management to be entitled under the Statute of Distributions (*a*) to receive the same, without taking out letters of administration. (37 & 38 Vict. c. 42, § 29.)

When a member who has executed a mortgage to the society dies intestate, leaving an infant heir or infant co-heiress, the society may, after selling the premises so mortgaged to them, pay to the administrator of the deceased any balance of money to the amount of £150 remaining in the hands of the society, without being required to pay the same into the Post Office Savings Bank as provided by the Trustees Relief Acts. (37 & 38 Vict. c. 42, § 30.)

Liability for Loans and Deposits in excess of Limits.

If any society under the Act receive loans or deposits in excess of the limits prescribed by the Act, the directors or committee of management shall be personally liable for the amount so received in excess. (37 & 38 Vict. c. 42, § 43.)

No Commissions to be Received by Officials.

No director, secretary, surveyor, solicitor, or other officer of a building society shall, in addition to his authorised remuneration, receive from any other person any gift, bonus, commission, or benefit, for or in connection with any loan made by the society; and any person paying or accepting any such gift, bonus, commission, or benefit, shall be liable on summary conviction to a fine not exceeding £50, and, in default, to be imprisoned with or without hard labour for any time not exceeding six months; and the person accepting any such gift, bonus, commission, or benefit, shall, as and when directed by the court by whom he is convicted, pay over to the society the amount or value thereof, and, in default, shall be liable to be imprisoned with or without hard labour for any time not exceeding six months. (57 & 58 Vict. c. 47, § 23.)

(*a*) For a list of the persons entitled under the Statute of Distributions, see *post*, pp. 491, 492.

PART IX.

HOUSES AND LANDS.

SECTION I.—LANDLORD AND TENANT.

Hiring and Letting House, Land, &c.

In all cases of hiring a house, land, apartments, warehouse, or any other premises, there should be an agreement in writing; and if such agreement be explicit and carefully drawn up, disputes and misunderstandings may be avoided. The agreement should be stamped; it need not be prolix; a simple contract between the parties will be sufficient, provided it give the date of its execution, the date as from which it is to take effect, the names and descriptions of the parties, a clear description of the property agreed to be let, the amount of rent, times of payment, and length of notice required on quitting; and (if for a term of years) powers of re-entry on non-payment of rent.

If the property hired be a furnished house, an inventory of the furniture should be affixed to or written upon the agreement and signed by both parties. Every such agreement should bear a stamp, however short the term.

An agreement to let a house, or even lodgings, is a contract for an interest in land within the meaning of the Statute of Frauds (29 Ch. II. c. 3, § 4), and should therefore, in order to be legally enforceable, be in writing, if it is to extend beyond the term of one year; and it should also be properly stamped. The stamp is an *ad valorem* one, varying with the rent and the term (*a*).

(*a*) See *post*, pp. 380-383, for forms of Agreement for letting a furnished house and furnished and unfurnished apartments, and for a lease of house and premises.

Tenancy from Year to Year.

A tenancy from year to year is constituted where one lets lands or tenements to another at a yearly rent, and either without specifying any certain time or specifying a time to expire at the end of the first or any subsequent year, on notice. Such a tenant is entitled to half-a-year's notice to quit, notwithstanding that he may pay his rent half-yearly or quarterly : and such notice must expire at the period of the year at which his tenancy commenced (*a*). The same rule applies to the tenant who may wish to give notice to his landlord of his intention to quit.

Tenancy for less than a Year.

An indefinite tenancy for less than a year will, in the absence of special stipulation, be a quarterly, monthly, or weekly tenancy, according to circumstances, the most important of which is the payment of rent.

Tenant on Sufferance.

A tenant on sufferance is one who lawfully took possession, but after his right has expired continues in possession without the leave and without any objection on the part of the owner. He may be turned out of possession by his landlord, after demand of possession. If he is turned out without such demand he cannot maintain an Action of ejectment, but he may of trespass (*b*). A person who lives in a house rent-free by the sufferance of the owner is also a tenant at will (*c*). It requires little evidence of acquiescence to turn a tenancy on sufferance to a tenancy at will.

Tenancy at Will.

A tenancy at will implies a letting and holding at the will of the landlord ; in which case the tenant is called a tenant at will, because the landlord may put him out at any time he pleases. A letting "to hold as long as I please," or "for me to take again when I please," creates a tenancy at will (*d*). The landlord must demand possession before ejecting.

(*a*) *Martin* v. *Watts*, 7 T. R., 85 ; *Clayton* v. *Blakey*, 8 T. R., 3.
(*b*) Cole, Ejectment Law and Practice, 456.
(*c*) *R.* v. *Collett*, Russ. & Ry., 498, 525.
(*d*) Co. Litt. 55 a. ; *R.* v. *Fillongley*, Cald., 569.

Implied Tenancy.

A tenancy may be implied from the acceptance of rent and the occupancy of the premises.

Tenant's Duty at Expiration of Tenancy.

The tenant must, at the expiration of his tenancy, deliver up possession of the premises, together with all buildings, erections, and landlord's fixtures. If the tenant has underlet any part of the premises, he must get such under-tenant out, for the landlord is entitled to complete possession, and the tenant's responsibility does not cease until such is obtained (*a*).

Underletting.

The tenant of a dwelling-house may assign or underlet all or any part of it during his own term, unless expressly restricted from so doing by agreement to the contrary.

Tenant for Three Months not liable to Poor Rates.

The occupier of any rateable premises let for a term not exceeding three months is entitled to deduct from the rent the amount paid by him for poor rate, and the owner is bound to allow such deduction. (33 & 34 Vict. c. 41, § 1.)

Payment of Rates by Outgoing Occupier.

Formerly an outgoing occupier was liable to pay the whole of his proportion of a poor rate made whilst he was in occupation, though he gave up the premises and they remained unoccupied: but now, an outgoing occupier is only liable to pay so much of the rate as shall be proportionate to the time of his occupation within the period for which the rate was made; although he may not be immediately succeeded in his occupation by an incoming tenant.

Tenant or Under-tenant Refusing to Quit.

If the tenancy of a house or apartments has expired, and the tenant or under-tenant refuses to quit, the landlord is not justified in putting him out by force, but must take proceedings in ejectment. If, however, the tenant be gone away, and the house deserted, no one being in possession, the landlord may be justified in breaking into it and obtaining possession (*b*).

(*a*) *Harding* v. *Crethorn*, 1 Esp., 57.
(*b*) *Hilary* v. *Gay*, 6 C. & P., 284; *Turner* v. *Meymott*, 1 Bing., 158.

Tenant Quitting without Notice.

If a weekly, monthly, or other tenant quit premises without giving notice, the landlord may recover a week's, month's, or other rent beyond the time the tenant actually occupied ; such rent to commence and be calculated from the day of payment which first happens after the tenant has so left ; and notwithstanding that the landlord may have put up a bill in the window for the purpose of letting the premises, or lighted or used fires in the rooms ; but if the landlord let the premises to another tenant before the expiration of such time he rescinds the contract, and cannot recover rent for any subsequent portion of the time included in the original tenancy during which they remained unoccupied (*a*).

Waiver of Notice to Quit.—New Tenancy.—Liability of Guarantor of Rent.

The effect of waiving a notice to quit given to a yearly tenant is to create a new tenancy from year to year ; and consequently a guarantor of the rent under the original tenancy is not liable for rent becoming due after the time when the notice would have expired (*b*).

Sub-tenant paying Ground Rent

A payment of ground-rent by a sub-tenant to a superior landlord, when the sub-landlord has made default in payment, may be deducted by the tenant out of the next payment of rent to such sub-landlord (*c*).

Leases.

A lease for more than 3 years must be made by deed—that is, by writing under seal ; for 3 years or less it may be made by deed, or by writing not under seal (*d*), or by verbal contract where followed by entry of the tenant (*e*). But a demise of incorporeal hereditaments (such as tithes, tolls, advowsons, rights of shooting, and the like) must be by deed (*f*). And by Statute (8 & 9 Vict. c. 106) it has been enacted that a lease required by law to be in writing, if made after 1st October,

(*a*) *Redpath* v. *Roberts*, 3 Esp., 225 ; *Walls* v. *Atcheson*, 3 Bing., 462.
(*b*) *Tayleur* v. *Wildin*, 37 L. J. Ex., 173
(*c*) *Carter* v. *Carter*, 5 Bing., 406.
(*d*) *Pollock* v. *Stacey*, 9 Q. B. 1035 ; *Chapman* v. *Bluck*, 4 Bing. N. C. 187.
(*e*) Woodf. L. & T. (13th ed.), 127 ; *Rigg* v. *Bell*, 5 T. R., 471.
(*f*) *Bird* v. *Higginson*, 5 A. & E., 824 ; *Wood* v. *Leadbitter*, 13 M. & W., 839.

1845, should be void at law unless made by deed, though it may be good as an agreement for a lease. An agreement for a lease may be made in writing not under seal, as by a series of letters (*a*). Entry under a void lease constitutes a yearly tenancy.

A lease may be made for life or lives, for years, or at will; but it must always be for a less term or interest than the lessor himself has in the premises. If for the lessor's whole interest it is, in effect, an assignment; though it may sometimes be supported as an under-lease (*b*). A lease for years may be made to commence from the day of the date, from a day that is past, as from Lady-day last, from a future period, as from Michaelmas next, or any number of years after, or after the death of the lessor, or of any other named person. But when it is to commence *in futuro*, it is termed an *interesse termini*, or future interest. A lease for life, however, cannot be made to commence *in futuro;* because a lease for life is an estate of freehold, and no estate of freehold can, at common law, commence *in futuro* (*c*).

Leases by actual tenants in tail may be made for any term, under the Fines and Recoveries Act; but if for a term exceeding 21 years, or at less than proper value, they must be enrolled. (3 & 4 Wm. IV. c. 74.)

Mortgagees in possession and mortgagors in possession can grant similar leases to leases under the last mentioned Act. By the Settled Land Act, 1882, tenants in tail and tenants for life can grant leases for 21 years, so as to bind the inheritance. Such leases must be at proper rent, and must take effect within 12 months after their date. Limited owners can also grant building and mining leases under the same Act.

Corporations aggregate may take leases in their corporate capacity (*d*); but one individual of a corporation aggregate cannot take a lease from the corporation (*e*).

Covenants running with the Land.

These are covenants "inherent in the land," and are annexed to the estate, the performance or non-performance of which must affect the thing demised and its mode of enjoyment (*f*).

(*a*) *Chapman* v. *Bluck*, 4 Bing., N. C., 187.
(*b*) *Pollock* v. *Stacey*, 9 Q. B., 1035.
(*c*) Shep., Touch., 272; 2 Black., Comm., 144.
(*d*) Bac., Abr., Tit. Corporations, E., 4.
(*e*) *Salter* v. *Grosvenor*, 8 Mod., 303.
(*f*) *Spencer's Case*, 1 Smith, L. C. (9th ed.), 45.

So that the rights and liabilities thereunder pass to an assignee of the land or of the lease. Such are covenants relating to the cultivation of the lands (*a*), to pay rent, or render suit and services (*b*), to dwell in and upon the demised farm and lands (*c*), to insure the buildings (*d*), not to exercise thereon certain specified trades (*e*), to repair, to discharge the land from taxes, &c. (*f*), and to make good damage done by digging for and carrying away clay or minerals in the exercise of a right granted for a term of years (*g*), to grind at the lessor's mill all the corn grown on the demised lands (*h*). So also covenants by the lessee not to assign without licence, not to erect buildings to obstruct the lessor's light, or to destroy his prospect, or impede the air (*i*). These, and such like, are covenants which run with the land, and pass with the reversion to the heir or devisee, and bind all the assignees of the term (*k*).

Destruction of Premises by Fire: Tenant's Liability.

By the law of Scotland, if premises are burnt down by accidental fire, the tenant is relieved from payment of the rent; but by the law of England—

Where a lessee covenants to pay rent, he is bound to pay it though the house be burned down (*l*). Where a house was burned during a tenancy under a written agreement, the landlord was held to be still entitled to recover rent subsequently accruing due (*m*). So also a tenant from year to year of part of a house, under a verbal agreement, has been held liable in the same form of Action (*n*).

The principle upon which the above cases were decided is, that if a person of his own free will contracting with another accepts a liability, he is bound to discharge it, not-

(*a*) *Cockson* v. *Cock*, Cro. Jac., 125.
(*b*) *Stevenson* v. *Lambard*, 2 East, 575.
(*c*) *Tatem* v. *Chaplin*, 2 H. Black., 133.
(*d*) *Vernon* v. *Smith*, 5 B. & Ald., 1.
(*e*) *Doe* v. *Keeling*, 1 M. & S., 95; *Hodgson* v. *Coppard*, 30 L. J. Ch., 20.
(*f*) *Martyn* v. *Clue*, 18 Q. B., 681.
(*g*) *Martyn* v. *Williams*, 26 L. J. Ex., 122; 1 H. & N., 828.
(*h*) *Vyvyan* v. *Arthur*, 1 B. & C., 415.
(*i*) *Bachelor* v. *Gage*, Cro. Car., 188.
(*k*) In the case of *Bird* v. *Eggleton* (29 Ch. D., 1012; 54 L. J. Ch., 819) this doctrine was applied to the provisions of an Inclosure Act at the suit of an adjoining owner.
(*l*) *Weigall* v. *Waters*, 6 T R., 488; *Hart* v. *Windsor*, 12 M. & W., 68; *Holtzappfel* v. *Baker*, 18 Ves., Jun., 115.
(*m*) *Baker* v. *Holtzappfel*, 4 Taunt., 45.
(*n*) *Izon* v. *Garton*, 5 Bing., N. C., 501.

withstanding inevitable accidents; for if he intended to guard himself against such consequences he should have made a bargain to that effect.

The tenant, in order to get rid of his liability as soon as possible after the premises are burnt down, should give notice to his landlord of his intention to quit: but such notice must be a legal one, determining the tenancy at a proper time, according to the terms of the hiring.

If the landlord has entered into a covenant or agreement to repair or to keep the premises insured against fire, and they be burned down, the tenant will nevertheless remain liable for the rent during the restoration (*a*). In the absence of stipulation he cannot compel the landlord to apply insurance money which he has received for the purpose of rebuilding. The insurance company may, however, at the tenant's request, apply the insurance money in rebuilding (*b*). If the tenant has covenanted to repair, he will be liable to rebuild, but otherwise he will not be liable if the fire be accidental.

Chimneys taking Fire.

If the chimney of any house or building within the Metropolis be on fire, the occupier will be liable to a penalty not exceeding 20*s.*, to be recovered in a summary manner. But if the occupier proves that the penalty was incurred by the neglect or wilful default of any other person he may recover the whole or any part of the penalty, in the same manner, from such person. (28 & 29 Vict. c. 90, § 23.)

Repairs.

A landlord is not liable to repair, except when he has agreed to do so (*c*). Nor, except in the case of a furnished house, is there any implied undertaking on the part of the landlord that the property is fit for habitation or occupation. An intending tenant must satisfy himself on these points before making his contract. Where no agreement has been entered into or stipulation made as to repairing, the tenant or lessee is bound to use the premises in a proper way, and to repair damage which he may himself have caused; but he is not bound to make good mere wear and tear.

If a lessee covenant to keep in repair, he must do so, not-

(*a*) *Lofft* v. *Dennis*, 1 E. & E., 474; 28 L. J. Q. B., 168; *Leeds* v. *Cheatham*, 1 Sim., 146; and see *Surplice* v. *Farnsworth*, 7 M. & Gr., 584.
(*b*) 14 Geo. III. c. 78, § 83.
(*c*) *Pindar* v. *Ainsley*, cited 1 T. R., 312.

withstanding accidents by which the premises are destroyed or injured (*a*).

A tenant is not justified in determining the tenancy of a furnished house because during the term a portion of the plaster of the ceilings (which were cracked and fractured at the commencement of the tenancy) fell in one room, and the plastering of the ceilings in other rooms was unsound and liable to fall. On the letting of a furnished house, the implied term that it shall be fit for human habitation only applies to the condition of the premises at the commencement of the tenancy (*b*).

And a landlord who lets an unfurnished house, even in a dangerous condition, but does not undertake to keep it in repair, is not liable to the tenant, or to any other person using the premises, for personal injuries due to the defective state of the house which may happen during the term (*c*).

Tenants or Lodgers Damaging the Premises or Furniture.

In the Metropolitan Police District, compensation for wilful damage done by tenants to premises or to furniture may be awarded by a Police Magistrate to the extent of £15 (2 & 3 Vict. c. 71, § 38). The landlord must take proceedings against the tenant within one month after the offence is committed (*d*).

In other cases an Action may be brought on the express or implied promise to use and keep the premises in a tenantlike manner, and the owner of the reversion may, on proving his title, apply to the Court for an Injunction against any act of *commissive* waste which is contemplated (*e*).

As to Tenant's Buildings, Fixtures, &c.

At the expiration of his tenancy, the tenant, in giving up possession, must leave all erections, buildings, improvements, and landlord's fixtures, which he is not entitled to remove, although he (the tenant) himself has erected them. But where they have been erected for the purpose of trade, or for agricultural purposes, or for convenience or ornament, they may generally be removed by the tenant (*f*).

If ornamental fixtures are of the nature of permanent improvements, and their removal would cause damage, they cannot be removed.

(*a*) *Monk* v. *Cooper*, 2 Str., 763.
(*b*) *Maclean* v. *Currie*, 1 Cab. & Ellis, 361.
(*c*) *Lane* v. *Cox*, C. A. [1897] 1 Q. B., 415.
(*d*) *Dowell* v. *Beningfield*, 1 Car. & Mar., 9.
(*e*) Park, An. 47 ; *Davies* v. *Leo*, 6 Ves., Jun., 784.
(*f*) Amos and Ferard, Fixtures (3rd ed.), 40 ; Woodf., L. & T. (13th ed.), 620.

Furnished Houses and Lodgings.

In an agreement for hiring a furnished house or rooms there is an implied condition that the premises are reasonably fit for habitation. And therefore, if they are unfit at the commencement of the term, the tenant may rescind the agreement. The presence of bugs is one form of such unfitness (*a*). Again, where the tenant found bad smells in the basement, arising from a sewer beneath the floor, he left the house and declined to occupy it, notwithstanding that the landlord afterwards remedied the defective drain. The Jury found that the house was not fit for habitation at the time the tenant entered, and the Court held that the Defendant was justified in rescinding the contract, and was not liable for rent (*b*).

But there is no implied condition or undertaking in such an agreement that the premises shall *continue* fit for occupation during the term, so that, in the case of lodgings, if infectious illness break out in the house during the term the lodger is not released from his agreement (*c*).

Rights of Lodgers and Occupiers of Apartments.

A person who takes lodgings on the first, second, or higher or lower floors of a house has an implied right to the use of the door-bell, the knocker, the skylight of the staircase, and the closet, unless it be otherwise stipulated at the time of hiring. If the landlord deprive the lodger of the use of any of those conveniences the lodger cannot refuse to pay his rent on that ground: nor on the ground that he has been denied the use of a cellar, or wash-house, or other such privilege; neither can he set-off any part of the rent on the ground that he has been deprived of any such privileges. The proper course is to pay the rent, and then sue the landlord in an Action at law for his breach of the contract (*d*).

Letting Lodgings or House where Infectious Disease.

If any person lets for hire, or shows for that purpose, any house or part of a house, and when questioned by any person negotiating for the hire thereof as to there being, or having been, any person therein suffering from any dangerous infectious disorder, knowingly makes a false answer to such question, the person so answering will be liable to be imprisoned for a month with hard labour, or to pay a penalty of £20 or

(*a*) *Smith* v. *Marrable*, 11 M. & W., 5; *Hart* v. *Windsor*, 12 M. & W., 68.
(*b*) *Wilson* v. *Finch-Hatton*, 2 L. R. Ex. D., 336; 46 L. J. Ex., 489.
(*c*) *Sarson* v. *Roberts*, C. A. (1895), 2 Q. B., 395.
(*d*) *Underwood* v. *Burrowes*, 7 C. & P., 26.

imprisonment. And if any person lets for hire any house or part of a house in which any person suffering from a dangerous infectious disease has been living, without having the same disinfected and having a medical certificate of such disinfecting, he is liable to a similar penalty. The latter provision extends to inns, and both provisions appear to extend to furnished and empty houses alike. (38 & 39 Vict. c. 55, §§ 128, 129.)

In a recent case, where the landlord of an unfurnished house had warranted it as in a sanitary condition, and it appeared that deaths from diphtheria and typhoid fever had occurred in the house previous to the warranty, but the drains had nevertheless been left in a dangerous state of neglect, the tenant, whose daughter died in the house from diphtheria, recovered from the landlord £61 damages for breach of the warranty (*a*).

Escape of Water from Upper Floor of House.

Where water escaped from the upper floor of a house and injured the goods of the occupier of an under floor, it was held that as the water escaped from a pipe, and without any wilful negligence on the part of the occupier of the upper floor, he was not liable for the damage caused to the occupier of the under floor (*b*). Nor is the landlord liable who lets his house in flats to various tenants with a water supply on each floor, if the pipes be, under all the circumstances, reasonably fit and proper for the purpose to which they are applied, and the bursting of them be not caused by the negligence or want of skill of the person employed by the landlord to fix them (*c*).

Lodgers' Goods, and Distress for Rent by Superior Landlord.

Before the passing of the Lodgers' Goods Protection Act in 1871, the furniture and effects of lodgers were liable to be seized and sold if a distress for rent due from the tenant of the house were made by the landlord, although nothing might be owing by the lodger.

But now, if any "superior landlord" distrain, or threaten to distrain, upon the goods of his tenant for arrears of rent, any lodger who has furniture or goods in the house may serve such superior landlord, or the bailiff or person distraining with a declaration (see form below) setting forth that the tenant of the house has no right of property or beneficial interest in the said furniture, &c., and that the same are the property, or in the lawful possession, of such lodger; and also setting forth whether any and what rent is due, and for what

(*a*) *Vallance* v. *Cartwright* (before Mr. Justice Day). L. J. N.S.
(*b*) *Ross* v. *Fedden*, 7 L. R. Q. B., 661; 41 L. J. Q. B., 270.
(*c*) *Anderson* v. *Oppenheimer*, 5 L. R. Q. B. D., 602.

period, from such lodger: and such lodger may pay the same to the superior landlord or person distraining, or so much thereof as may be sufficient to discharge the claim of the superior landlord: and any payment so made is to be deemed a valid payment of rent by such lodger to his immediate landlord. (34 & 35 Vict. c. 79.)

An inventory, signed by the lodger, must be delivered with the declaration, describing all the goods, &c., of the lodger.

It is a misdemeanor to make a false declaration or inventory, knowing the same to be false.

If after the declaration is served, and the lodger shall have paid or tendered his rent as aforesaid, the goods be distrained, it will be an illegal distress, and the lodger may apply to a stipendiary magistrate or two justices of the peace for an order for recovery of the goods; and the superior landlord will also be liable to an Action at law at the suit of the lodger.

The protection given by the Act applies even where the "lodger" occupies almost the whole of the house (*a*), and also whether he has sole possession of his rooms or not.

A wide construction has been given to the term "tenant" in the Act. In a case where the superior landlord A had let premises to B, who verbally agreed to assign them to C, who obtained possession and let lodgings to D, A distrained on D's goods for B's rent. Upon being served with the usual notice, A objected that C was not a tenant within the meaning of the Act, and therefore D could not be a lodger. The Divisional Court, however, held that C was a tenant within the Act, and that D's notice was good (*b*).

Form of Declaration by Lodger.

Subjoined is a form of declaration which, when duly filled up according to the facts, may be served either on the superior landlord or on the party distraining. If any rent is due from the lodger, he should tender it to such superior landlord or party distraining, and take a receipt for it. The lodger must not, however, pay any rent in advance, but only that actually due from him at the time of the distress:—

To Mr. A. B. [*landlord*], of, &c., to his bailiff, and to all others whom it may concern.

I, C. D., of No. —, —— Street, —— do hereby declare that I am a

(*a*) *Phillips* v. *Henson*, 3 L. R. C. P. D., 26.

(*b*) *Bensing* v. *Ramsay*, cited in *Law Journal*, Sept. 3, 1898. In giving judgment, Lord Chief Justice Russell laid it down that, "a tenant for the purposes of the Act may be a licensee, a tenant on sufferance, or a tenant at will: all that seems to be necessary is that the tenant should have possession under circumstances in which he could not be deemed a trespasser."

lodger, occupying [the first floor and back kitchen] at the house, No. —, aforesaid, and that your immediate tenant, Mr. E. F., has no right of property or beneficial interest in the furniture, goods, and chattels distrained upon [or threatened to be distrained upon] by you in the aforesaid rooms so occupied by me as aforesaid, and that all and every the furniture, goods, and chattels in the aforesaid rooms are my property [or, in my lawful possession], and the same are described or mentioned in the inventory hereunder written [or, hereon indorsed, or, hereunto annexed]. And I hereby also declare that there was and is due from me to the said E. F., the sum of £——, for — quarters' [or weeks'] rent of the said lodgings, from the —— day of —— last to the —— day of ——, 189—, and no more [or, I have paid the said E. F. all rent and arrears of rent in respect of the said lodgings up to —— last].

The Inventory above [or within] referred to:

[Here describe the furniture, as (for example)—
A walnut-wood pianoforte by Cramer and Co.
A mahogany dining-table with three shifting leaves.
8 rosewood chairs and 2 easy ditto.]

[Signature of Lodger.]

Dated this —— day of ——, 189—.

When Lodger's Goods are stolen.

A lodger must take care of his own goods, and the lodging-house keeper is not responsible for theft, unless he undertakes the charge of the goods. In this respect the law makes a distinction between an innkeeper and a lodging-house keeper (*a*).

Notice to Quit.

A notice to quit may be by word of mouth or in writing. If the latter it must be signed by the landlord or person duly authorised to give it. A notice by the tenant to his landlord of intention to quit if in writing must be signed by the tenant. It is better that these notices should always be in writing.

In either case the notice, if in writing, should be served to the party to whom it is addressed. Service will be good if the notice be sent by post or left at the residence of the party with a servant or other person; but the name of the person with whom it is left should be taken; and a copy of the notice kept, with an indorsement thereon by the person who served it, of the day on which served, and on whom. Notice always has reference to the letting. Thus, in a letting from week to week, a clear week's notice, expiring on the day the rent becomes due, will be sufficient: in a letting by the month, a month's notice; by the quarter, a quarter's notice. But if the premises are let by the year, there must be half a year's notice to quit, ending at the period of the year at which the tenancy commenced, and this, notwithstanding that the rent is payable quarterly, unless it was agreed at the time of hiring that a

(*a*) *Holder* v. *Soulby*, 29 L. J. C. P., 246.

quarter's notice should be sufficient (*a*). If the tenancy be a tenancy from year to year, the tenant to quit at a quarter's notice, the expiration of a notice must be the end of a year.

A tenancy "for one year certain and so on from year to year" creates a tenancy for two years at least, and no notice can be given until the second year.

When Notice not necessary.

Where by the terms of the lease or agreement the occupation is to cease on a certain day, or on the happening of a certain event, there is no necessity for any notice to quit, because both parties are equally apprised of the determination of the term (*b*). But if the tenant is allowed to continue in possession for a year after his lease has expired, or if rent has been received by the landlord after such expiration, notice must be given before the tenant can be turned out; for where by the consent of both parties the tenant continues in possession, the law implies a renovation of the contract, and in such cases the tenant becomes a yearly tenant upon the former terms (*c*), so far as they are applicable.

And where the lease is for 21 years, determinable at the end of the first 7 or 14 years, if it be desired to determine the tenancy at the end of the 7 or 14 years, notice is necessary (*d*). The lease generally provides what period of notice shall be given.

If a tenant simply holds over he becomes a tenant on sufferance.

Forms of Notice to Quit.

From Landlord to Tenant to quit House and Land.

To Mr. ——

I hereby give you notice to quit and deliver up on the 29th day of September, 18—, all that messuage or dwelling-house, paddock, garden, and premises, with their appurtenances, situate at ——, in the county of ——, which you now hold of me as tenant thereof.

Dated this —— day of March, 189—. [Signature of Landlord.]

From Tenant to Landlord of his intention to quit House and Garden.

To Mr. ——

I hereby give you notice that it is my intention, on the 25th day of March, 18—, to quit and deliver up the messuage or tenement, garden, and premises, with their appurtenances, situate at ——, in the city of ——, which I now hold of you.

Dated this —— day of September, 189—. [Signature of Tenant.]

(*a*) Woodf., L. & T. (13th ed.), 332.
(*b*) *Right* v. *Darby*, 1 T. R., 162.
(*c*) *Cobb* v. *Stokes*, 8 East, 358.
(*d*) *Chapman* v. *Tower*, 6 M. & W., 100.

From Tenant to Landlord of his intention to quit Apartments.

To Mr. ——

I hereby give you notice that it is my intention, on Saturday, the 26th day of April instant, to quit and deliver up the rooms, or apartments, with their appurtenances on the first floor and basement at No. 16, —— Street, —— Square, which I now hold of you.

Dated this 19th day of April, 189—. [Signature of Tenant.]

Continuing in Possession after Notice.

Where a landlord has given a tenant notice to quit, and the tenant continues in possession after the notice, but nothing is done to show that a new tenancy is created, the landlord cannot distrain for rent said to be due after the notice expired (*a*). He can, however, sue for use and occupation, and if the tenant has given notice the landlord can sue for double rent. (11 Geo. II. c. 19, § 18.)

Form of Agreement for Letting a Furnished House.

An agreement made this 20th day of June, 18—, between A. B. of, &c., of the one part, and C. D. of, &c., of the other part. The said A. B. hereby agrees to let, and the said C. D. hereby agrees to hire, all that messuage or tenement, situate at ——, in the county of —— [or known as No.—, at —— Street, in the city of London], together with the outbuildings, yard, garden, and premises thereto belonging, now in the occupation of the said C. D., for one year, from the 24th day of June instant, and so on from year to year, until this agreement shall be determined by one of the said parties giving to the other three calendar months' notice in writing, such notice to expire on one of the quarterly days on which the rent is hereinafter reserved to be paid, at and under the yearly rent of £—— per annum, payable by four equal quarterly payments: viz. on the 29th day of September, the 25th day of December, the 25th day of March, and the 24th day of June in each year [without any deduction except ——], the first payment to be made on the 29th day of September now next ensuing. And it is hereby agreed by and between the said parties, that the said C. D. shall have, use, and enjoy, in and upon the said messuage and premises, all the furniture and effects belonging to the said A. B., and more particularly mentioned or specified in the schedule hereunto annexed [or hereunder written], during the whole of such time as the said C. D. shall continue to occupy the said messuage and premises under this agreement, but not for any other time or purpose, or in any other house or place whatsoever. And that he the said C. D., his executors and administrators, shall and will pay unto the said A. B., his executors, administrators, or assigns, for the use of the said furniture and effects, the sum of £—— per annum, in addition to the said yearly rent of £——, by quarterly payments on the days and times appointed for the payment of the said rent of £——, &c., clear of all deductions on any account whatsoever. And the said C. D. doth hereby agree with the said A. B., that he the said C. D., his executors or administrators, shall and will from time to time during all the time he shall continue to hold and occupy the said messuage and premises under this agreement, well and substantially

(*a*) *Alford* v. *Vickery*, 1 C. & M., 280.

repair and keep in repair, at his own expense, all the glass and other windows, window-shutters, doors, locks, fastenings, bells, and all other fixtures in, upon, and belonging to the said premises, and leave the same in good and tenantable repair at the time of quitting the occupation of the said premises. And shall not nor will wilfully injure any of the said furniture and effects, nor remove the same or any part thereof from the said premises. And shall and will keep and preserve the same and every part thereof in such, the same or the like state and condition as at present (the reasonable use thereof and damage thereto by fire only excepted), and supply and make good (by replacing articles of the same sort and value) all such articles of the said furniture and effects as may be broken, damaged, or destroyed. And on quitting the occupation of the said messuage and premises, shall and will deliver up to the said A. B., his executors, administrators, or assigns, or leave in or upon the said messuage and premises, all and every the said furniture and effects in such good state and condition as aforesaid, except such articles as may have been destroyed as aforesaid; and in lieu thereof, such articles as shall have been substituted as aforesaid; and damage thereto by fire also excepted. And it is also agreed that the said A. B., his executors, administrators, or assigns, shall and will during all the time the said C. D. shall continue to occupy the said messuage and premises, maintain and keep in good and tenantable repair, the roof, main walls, timbers, chimneys, and exterior of the said messuage and buildings, and also the yards, pavements, drains, and water courses belonging to the said premises. Witness the hands of the said parties the day and year first above written.

The Schedule to which the above agreement refers.
(*Here set out Inventory of the Furniture.*)

A. B.
Witness, E. F. of, &c. C. D.

Form of Agreement for Letting Unfurnished Apartments.

An agreement made this 20th day of June, 18—, between A. B. of, &c., of the one part, and C. D. of, &c., of the other part. Whereby the said A. B. agrees to let, and the said C. D. agrees to hire, the rooms or apartments following, that is to say, the entire first floor, one back room on the third floor, the back kitchen, cellar, and coal house on the basement, with the use of the yard and other conveniences thereto belonging, being part of a house and premises known as No. —, —— Street, —— Square, in the city of ——. To have and to hold the said rooms or apartments and premises with their appurtenances for one year, from the 24th day of June instant, at the yearly rent of £——, payable in four quarterly payments on the 29th day of September, the 25th day of December, the 25th day of March, and the 24th day of June, the first payment to be made on the 29th day of September now next ensuing And it is hereby agreed that either party shall be at liberty to determine the tenancy hereby created on giving to the other one quarter's notice in writing, determinable on one of the said quarterly days. And it is hereby also agreed by and between the said parties hereto, that on quitting the said rooms or apartments and premises, hereby agreed to be let, the said C. D. shall and will leave the same in a good state, condition, and repair (reasonable wear and damage by accidental fire only excepted). Witness the hands of the said parties the day and year first above written.

A. B.
Witness, E. F. of, &c. C. D.

Form of Agreement for Letting Furnished Lodgings.

An agreement made this 20th day of June, 18—, between A. B. of, &c., of the one part, and C. D. of, &c., of the other part. Whereby the said A. B. agrees to let, and the said C. D. agrees to hire, the three rooms on the first floor, and the back kitchen on the basement, of the said A. B.'s house, situate at No. 7, —— Street, London, together with all and every the furniture and effects in the said rooms and back kitchen, and the use in common with the said A. B. of the yard and cellar on the said premises, at and under the weekly rent of £——, payable monthly, the first payment to be made on the 20th day of July now next ensuing. And it is hereby agreed that the said C. D. shall find and provide all manner of linen, china, and crockery-ware that he may require. And in the event of any of the furniture or effects hereby let with the said apartments being broken, damaged, or destroyed by the said C. D. or any of his servants, visitors, or others, the said C. D. shall and will make good, repair, or replace the same, or pay or allow unto the said A. B. a fair and reasonable sum to enable him to repair, make good, or replace the same. And it is further agreed that if either of the parties hereto shall be desirous of determining the tenancy hereby created, he shall be at liberty to do so on giving one week's notice in writing, to expire on a Saturday in any week during the said tenancy. Witness the hands of the said parties the day and year first above written.

A. B.
Witness, E. F. of, &c. C. D.

Form of Agreement for Lease of a House and Premises.

An agreement made this 20th day of June, 18—, between A. B. of, &c., of the one part, and C. D. of, &c., of the other part. Whereby the said A. B. agrees that he will by indenture to be executed on or before the 29th day of September now next ensuing, demise and let to the said C. D. all that messuage, tenement, or dwelling-house, with the garden, out-buildings, and appurtenances thereto belonging, situate in the parish of ——, in the county of ——, now or lately in the occupation of F. G. To hold the same to the said C. D., his executors, administrators, and assigns, from the said 29th day of September, for and during the term of fourteen years at and under the yearly rent of £——, payable quarterly, clear of all deductions whatsoever (except land-tax, landlord's property tax, quit-rents, &c.). And in which said lease there shall be contained covenants on the part of the said A. B., his executors, administrators, and assigns, for quiet enjoyment, and to allow out of the first two years' rent of the said premises the sum of £—— towards the repairs thereof. [And also that he will indemnify the said C. D., his executors, administrators, and assigns, against the payment of the ground-rent thereof during all the said term (*a*).] And on the part of the said C. D., his executors, administrators, and assigns, to pay the said yearly rent of £——. To repair and keep in repair the said messuage and outbuildings, together with all doors, gates, fences, rails, posts, pales (&c., &c.), and leave and deliver up the same, at the end or expiration of the said term, in good repair (damage by fire only excepted), and also that the said lease shall contain all other usual and reasonable covenants as between landlord and tenant and a proviso for re-entry on non-payment of rent. And the said C. D. hereby agrees to accept a lease on the terms and conditions aforesaid.

(*a*) If the property is not leasehold this clause may be omitted.

Provided that if at any time during the tenancy the said messuage shall be burnt down or damaged by fire the said A. B. will within three calendar months after the occurrence of such fire rebuild and reinstate the said premises fit for occupation to the satisfaction of C. D., and that in case the said messuage shall not be so rebuilt and reinstated within the period aforesaid, the rent hereby reserved shall cease until the same messuage shall be so rebuilt and reinstated fit for occupation as aforesaid. And it is mutually agreed that the cost of this agreement, and of the said lease, with a counterpart thereof, shall be borne by the said parties equally. Witness the hands of the said parties, the day and year first above written.

A. B.
Witness, E. F. of, &c. C. D.

Tenancy of a Farm.

From the mere fact of a tenancy of a farm (whether under a written or a verbal agreement) the law implies a promise on the part of the tenant to cultivate the lands according to the custom of the country where the same are situate; unless there be an express stipulation to the contrary (*a*).

Custom of the Country.

Although the custom of the country as to claims of the outgoing tenant of a farm will prevail, even where there is a lease, yet if the lease contain any express terms on the subject, evidence of the custom will be excluded (*b*); for the custom is, in that case, overridden by the terms of the lease. But a custom for the incoming tenant to be alone liable to compensate the outgoing tenant for seeds, tillages, &c., has been held to be unreasonable, and not supportable at law (*c*).

Deducting Land Tax and Property Tax.

Either land tax or property tax (*i.e.* landlord's income tax) paid by the tenant should be deducted out of the rent paid for the current year. The tenant cannot legally deduct the amount afterwards, or recover it back in an Action at law as money paid to landlord's use (*d*). It is usual to make the deduction from the next payment.

If a tenant, however, has agreed to pay "all rates and taxes," without excepting the land tax, he will not be entitled to deduct it. But any agreement in bar of the deduction of property tax paid by the tenant is void under the statute.

(*a*) *Powley* v. *Walker*, 5 T. R., 373; 1 Doug., 208; 4 East, 154; *Wilkins* v. *Woods*, 17 L. J. Q. B., 319.
(*b*) *Clarke* v. *Roystone*, 13 M. & W., 752.
(*c*) *Bradburn* v. *Foley*, 47 L. J. C. P. D., 331.
(*d*) 27 Vict. c. 18, § 15; *Cumming* v. *Bedborough*, 15 M. & W., 438; and see *Spencer* v. *Parry*, 3 A. & E., 331.

Rights as to Timber and Underwood, as between Landlord and Tenant.

The property in timber and trees and saplings is in the landlord. But the property in bushes is in the tenant (*a*).

Windfall timber belongs to the landlord, *i.e.*, to him who has the first vested estate of inheritance, whether in fee or in tail (*b*). But the tenant, by custom of the country, may have a right to the loppings. Windfalls of decayed timber, and of trees which are not timber, belong to the tenant.

"Timber" means trees fit for building and repairing buildings.

Fixtures.

A tenant should always remove his fixtures prior to the determination of his tenancy; for he cannot, after he has quitted the premises, re-enter for the purpose of severing and removing his fixtures (*c*).

In whatever mode a lease be determined, the tenant has no right (unless protected by special contract) to remove his fixtures after he has ceased to be in lawful possession: and so, where a tenant forfeited his lease by an act of bankruptcy, and the landlord re-entered, it was held that the landlord was absolutely entitled to all fixtures remaining upon the premises at the date of the re-entry (*d*). The same rule applies if the landlord recovers by ejectment.

Fixtures which Tenant may remove.

Those put up for ornament of premises or convenience of tenant's occupation. Those which have been held to come under this head as removable are:—hangings, tapestry, and pier-glasses, whether nailed to the walls or put up in lieu of panels, cornices, marble and other ornamental chimney-pieces, marble slabs, window-blinds, wainscot when *screwed* to the walls, grates, stoves, and ranges, although fixed in brickwork, iron backs to chimneys, beds fastened to the walls or ceilings, fixed tables, furnaces and coppers, pumps, mash-tubs, fixed water-tubs, coffee and malt mills, cupboards fixed with holdfasts, bookcases standing on brackets and screwed to the walls, clock-cases, iron ovens (*e*). But fixtures can only be re-

(*a*) *Berriman* v. *Peacock*, 9 Bing., 384.
(*b*) *Bewick* v. *Whitfield*, 3 P. Wms., 268.
(*c*) *Lyde* v. *Russell*, 1 B. & Adol., 394; *Nimshall* v. *Lloyd*, 2 M. & W., 450.
(*d*) *Pugh* v. *Arton*, 38 L. J. Ch., 619; L. R., 8 Eq., 626.
(*e*) See the numerous authorities for the above, collected and cited in Woodf., L. & T. (13th ed.), 620.

moved if this can be done without material damage to the freehold.

Removal of Trade Fixtures.

Trade fixtures are removable by the tenant, provided there be no express stipulation to the contrary in his lease or agreement. The following have been held to be trade fixtures :—Furnaces, vats, coppers, dyeing and brewing vessels and pipes belonging thereto, steam-engines and chimneys belonging thereto, baking-ovens, cider-mills, salt-pans, machinery, engines.

Plant and utensils actually used in trade, however bulky or complex, may be taken to pieces and removed ; also a temporary shed erected for the purpose of protecting a steam-engine or machinery, or for other temporary purpose ; but if the building stand on stone or brick foundations let into the soil, and is so constructed as not to be removable without the entire destruction of the fabric, it cannot be disannexed from the freehold and taken away (*a*).

Where a gas-engine had been obtained on the hire-and-purchase system, by a person in trade, under an agreement which provided that it should not become the property of the hirer until the payment of all the instalments, and should be removable by the owner on the failure of the hirer to pay any instalment—the engine being affixed to the freehold of the hirer by bolts and screws, to prevent it from rocking—it was held that the engine was sufficiently annexed to the land to become a fixture, and that any intention to be inferred from the terms of the hiring agreement that it should remain a chattel did not prevent it from becoming a fixture ; so that upon the mortgagee of the hirer entering into possession he was held entitled to the engine, notwithstanding that it was a trade fixture (*b*).

Greenhouses, Trees, and Shrubs.

There is a wider rule with respect to trade fixtures than others. Thus, a nurseryman is allowed to remove his greenhouses, but a *private individual is not.*

But greenhouses built in a garden, and constructed of wooden frames, fixed with mortar to foundation walls of brickwork, cannot be removed by the occupier who built them (*c*) ; and a boiler built into the masonry of the green-

(*a*) Woodf., L. & T. (13th ed.), 626.

(*b*) *Hobson* v. *Gowinge*, C. A. (1897) 1 Ch. 182 ; and see also *Gough* v. *Wood* (1894), 1 Q. B. 713, and *Cumberland Union Banking Co.* v. *Maryport Hæmatite Iron and Steel Co.* (1892), 1 Ch. 415.

(*c*) *Jenkins* v. *Gething*, 2 H. & J., 520.

house cannot be removed by the tenant, but the pipes of a heating apparatus connected with the boiler by screws may be removed (*a*).

As to small trees and shrubs, a nurseryman may remove them, but a private gentleman cannot remove even a box border (*b*).

A tenant under the Small Holdings Act, 1892, may, before the expiration of his tenancy, remove trees and bushes planted or acquired by him, or any shed, greenhouse, or pig-sty built or acquired by him, for which (in either case) he has no claim for compensation. (55 & 56 Vict. c. 31, § 4.)

Removal of Machinery by Tenant.

The tenant of a farm and lands may, with the consent in writing of his landlord, erect buildings and machinery, and (*c*) affix them to the freehold, and may remove them on leaving, on giving one month's notice in writing, to landlord, of his intention so to do. The landlord may then elect to purchase the whole, or any part of them, at a valuation. But the tenant must not quit the premises before taking steps as to them ; if he does he abandons his right. (14 & 15 Vict. c. 25.)

Rent: when Due—when Payable.

The amount of rent, and days or times of payment thereof, are matters for agreement at the time of hiring and letting. If the hiring is from quarter-day, and it is agreed that the rent shall be paid half-yearly, or quarterly, it is payable on each half-year's or quarter's day (as the case may be) of the year. If the hiring is from some day other than the quarter-day, the rent will be payable three or six months, as the case may be, from the day of hiring, unless otherwise agreed. Where the hiring is a yearly hiring at so much a year, and nothing is stated or agreed upon as to the time of payment, the rent is not payable until the completion of each year's tenancy (*d*).

Where it is intended that the rent shall be paid *in advance* during the *whole of the tenancy*, it should be so expressly stated in a written agreement; otherwise the inference will be, that the intention was that the *first quarter's rent* only should be so paid (*e*). It is sometimes stipulated that the last quarter's rent should be paid in advance.

(*a*) *Jenkins* v. *Gething*, 2 H. & J., 520.
(*b*) *Empson* v. *Soden*, 4 B. & Adol., 655.
(*c*) *Longbottom* v. *Berry*, 39 L. J. Q. B., 37.
(*d*) Latch, 264; *Collett* v. *Curling*, 16 L. J. Q. B., 390; 11 Jur., 890.
(*e*) *Holland* v. *Pulser*, 2 Stark, 161; *Hopkins* v. *Helmore*, 8 A. & E., 463.

Double Rent.

Double rent becomes due when a tenant has given notice of his intention to quit at a certain time but fails to do so. (11 Geo. II. c. 19, § 18.) But in order to entitle the landlord to double rent, the holding over by the tenant must be contumacious (*a*).

An Action may be brought in the County Court for double rent to be sued for as *double value* for use and occupation, where the sum claimed does not exceed £50. Double rent may also be recovered by distress.

Security for Rent.

Accepting a security for the rent due, such as a bond, bill, or promissory note, will not deprive the landlord of his right to distrain. Though he accepts a security he may still distrain (*b*): but payment of the bond or security will take away the right to distrain. And if the landlord accepts an agreement to pay interest on the rent in arrear, it does not take away his right to distrain (*c*).

Whilst the rent remains in arrear the landlord may distrain for it, unless after the rent became due he accepted a *bonâ fide* security, and, in consideration thereof, *specially agreed, by writing under his own hand, not to distrain.*

Tender of Rent.

A distress cannot be made after the rent has been tendered; but the tender must be of all arrears, and unconditionally. And though the tender be made on a Sunday, it will be a legal tender. If the landlord take a distress after the rent has been tendered, it will be illegal, and he will be liable to an Action. If the rent, arrears, and costs be tendered after the landlord has seized, and *before the impounding* of the distress, the landlord cannot legally distrain the goods: if he does he is liable to an Action of trespass (*d*). If the rent and costs be tendered within five days *after* the distress is impounded, the landlord must accept it, or be liable to an Action of trover for a subsequent detention (*e*). And so also if the rent be tendered *without the costs and expenses* after a warrant of

(*a*) *Swinfen* v. *Bacon*, 30 L. J. Ex., 33.
(*b*) Roll, Abr., Tit. Extinguishment; *Davis* v. *Gyde*, 4 Nev. & Man., 462.
(*c*) *Skerry* v. *Preston*, 2 Chit., 245.
(*d*) *Vertue* v. *Beasley*, 1 Moo. & Rob., 21.
(*e*) *Johnson* v. *Upham*, 28 L. J. Q. B., 252; overruling *Ellis* v. *Taylor*, M. & W., 415.

distress has been actually delivered to the broker, but before its execution (*a*).

If a landlord refuse to take the rent and arrears when legally tendered, and afterwards bring an Action of debt or covenant against the tenant, he cannot recover either damages or costs (*b*).

Payment of Rent under Protest.

If a landlord demand more than is due, the tenant, in order to prevent a distress or Action, should tender the amount claimed, *under protest*, and such a tender is good in law: the tenant may then sue the landlord for the excess and damages. A tender may be made either to the landlord or to the person who distrains (*c*).

Set-off against Rent.

Though the tenant have a set-off against the rent, or claims a debt due from his landlord, such will not take away the landlord's right to distrain; unless there be an express agreement in writing that the tenant's claim should be a set-off against the rent; and if the rent due be more than the agreed set-off, the landlord may distrain for the balance (*d*).

Executors or Administrators may Distrain.

The executors or administrators of any lessor or landlord may distrain for arrears of rent due to such lessor or landlord in his lifetime. (3 & 4 Wm. IV. c. 42, §§ 37, 38.)

An executor may distrain either before or after he has taken out probate to the will, and he may ratify a distress made in the name of the testator immediately after his death (*e*).

Husband or Wife Distraining.

A husband, who becomes entitled to land or houses in right of his wife, may distrain for arrears of rent accrued before or during marriage; and after the death of his wife, a husband may distrain for all rent due in right of his wife. And although the wife may join with her husband in distraining, in no case can she distrain alone (*f*), unless the property is her separate estate, and she has either been married or has acquired the

(*a*) *Bennett* v. *Bayes*, 5 H. & N., 391.
(*b*) *Anon.*, 1 Ventr., 21.
(*c*) *Hatch* v. *Hale*, 15 Q. B., 10.
(*d*) Woodf., L. & T. (13th ed.), 400.
(*e*) *Whitehead* v. *Taylor*, 10 A. & E., 210.
(*f*) *Osborne* v. *Wickenden*, 2 Saund., 195; *Howe* v. *Scarrott*, 4 H. & N., 723.

property since the commencement of the Married Women's Property Act, 1882 (see *post*, p. 449).

Agents and Receivers of Rents.

An authority to tenants to pay rent to a third person (as an agent or receiver) does not entitle that person to distrain: not even if he receives the rents for his own benefit (*a*). But a receiver appointed by a mortgagee under the powers contained in an Act of 1881, or by the Court, has full powers to sue and distrain for the rents. (44 & 45 Vict. c. 41, § 24.)

Bankruptcy of Tenant.

In case of bankruptcy, the landlord may lawfully distrain, though the tenant become bankrupt immediately afterwards. And he may distrain after the bankruptcy, if the tenant's goods remain on the premises, and this though the bankruptcy officer be in actual possession of the goods (*b*); but the distress is limited to six months' rent accrued prior to the adjudication (see *ante*, p. 234). He may prove in bankruptcy for any balance.

But a landlord has no lien, in case of bankruptcy, after the goods are removed from the premises; therefore, if he neglect to distrain, and the goods are sold and removed from the premises, his only remedy is to prove as for debt (*c*).

Payment of rent by a tenant who has committed an act of bankruptcy, to a landlord who threatens to distrain, is valid, and cannot be impeached by the assignees (*d*).

Fraudulent or Clandestine Removal of Goods.

Where the goods have been fraudulently or clandestinely removed for the purpose of avoiding a distress, the landlord or his agent may follow them at any time within 30 days after such removal, and take and seize them wherever found, as a distress for the rent due; and where such goods have been conveyed away and concealed, the landlord or bailiff, on making oath before a Justice of the Peace that he has reasonable grounds for suspecting such goods are so concealed, may procure an authority, and proceed with a constable to break open any doors, gates, and locks, for the purpose of distraining such goods; but the distress must be in the day-time, as in ordinary cases. (11 Geo. II. c. 19.)

(*a*) *Ward* v. *Shew*, 9 Bing., 608.
(*b*) *Pitt* v. *Snowdon*, 3 Atk., 102; *Hughes* v. *Hughes*, 3 Bro., C. C., 87.
(*c*) *Ex parte Plummer*, 1 Atk., 102.
(*d*) *Burrell* v. *Jones*, 3 B. & A., 47.

In order to justify the landlord in seizing goods so removed, the removal must have taken place after the rent became due (*a*). Rent becomes due on the morning of the day on which it is payable, but is not in arrear till next day. Therefore, if the tenant removes goods on the day on which it is due they cannot be followed till the next day. The Statute applies to a tenant's goods only, and not to those of a stranger or lodger (*b*).

Separate Holdings.

Where there are separate demises, even if contained in one deed, there should be separate distresses on the several premises, for no distress on one property can be good for rent issuing out of another (*c*).

Where lands lying in different adjoining counties are held under one demise at one entire rent, a distress may be taken in either county for the whole arrears, and "chasing a distress over" (*d*) is considered a continuance of the taking (*e*).

Where land occupied by several tenants is held under a single lease, at a single rent, the whole may be levied on the holding of any one or more of them.

Distress for Rent.

A distress may be levied for any kind of rent in arrear. But a landlord cannot distrain for double rent upon a weekly tenant, who holds over after notice to quit.

There must be an actual demise to the tenant, at a fixed rent: otherwise the landlord cannot distrain.

A distress upon a tenant occupying furnished apartments may be made of such goods as belong to him, or which may be found there, beyond those let with the rooms. [As to lodgers' goods, see Lodgers' Goods Protection Act, *ante*, p. 376.]

As to a Second or Double Distress.

In making a distress care should be taken that it be not made for more rent than is due, and the whole of what is due should be distrained for at one time; and if there be insufficient to satisfy the rent, the landlord may distrain again for the arrears: but a second distress cannot, in any case, be justified

(*a*) *Northfield* v. *Nightingale*, T. T., 1832; *Rand* v. *Vaughan*, 1 Bing., N. C., 767; *Watson* v. *Main*, 3 Esp., 15.
(*b*) *Thornton* v. *Adams*, 5 M. & S., 38.
(*c*) *Rogers* v. *Birkmire*, 2 Str., 1040.
(*d*) That is, continuing the distress in the other county.
(*e*) *Walter* v. *Rumball*, 1 Raym., 55.

where there is enough which might have been taken on the first. A landlord cannot split the entire sum, and distrain for one part at one time and for the other part at another (*a*). And therefore an Action will lie against a landlord to recover back the goods taken on a second distress, where he might have taken sufficient on the first, and so also if he voluntarily abandons the first distress, and then takes another (*b*).

So where a landlord, having made a legal distress upon the goods of his tenant, withdrew the distress in consequence of being informed, by a creditor of the tenant, that he was taking proceedings in bankruptcy against the tenant, and warning the landlord not to sell; it was held that a second distress was illegal, for the landlord need not have abandoned the first (*c*).

General Rule as to Distraining Goods for Rent.

The general rule is, that all chattels and personal effects (with certain exceptions hereinafter named) found upon the premises may be distrained for rent, whether they are the goods of the tenant or of a stranger. [But as to the goods of a lodger, see p. 376.]

The goods must be upon the premises (except in the case of a fraudulent removal), and are not liable if they have been already *bonâ fide* sold for value, and without fraud.

What may be Distrained, and what may not.

Under the Law of Distress Amendment Act, 1888, goods and chattels exempt from distress under the County Courts Act, 1888 (see p. 31, under "Execution of Process"), are also exempt from distress for rent, unless left behind on the premises after the expiration of a tenancy (51 & 52 Vict. c. 21, § 4).

Implements of trade are privileged from distress for rent, if they be in actual use at the time, or if there be any other sufficient distress on the premises. But if they be not in actual use, and if there be no other sufficient distress on the premises, then they may be distrained for rent (*d*).

Commodities of a perishable nature, which cannot be restored in the same state as that in which they were taken—as milk, fruit, &c.—cannot be distrained (*e*), nor can butcher's meat (*f*).

Railway rolling stock is specially protected by an Act of

(*a*) *Gambrell* v. *Earl of Falmouth*, 4 A. & E., 73.
(*b*) *Dawson* v. *Cropp*, 1 C. B., 961.
(*c*) *Bagge* v. *Mawby*, 8 Ex., 641.
(*d*) *Simpson* v. *Hartopp*, 1 Smith, L. C. (9th ed.), 463.
(*e*) *Morley* v. *Pincombe*, 2 Ex., 101.
(*f*) *Brown* v. *Shevill*, 2 A. & E., 138.

1872, which provides that rolling stock at any works, colliery, mine, manufactory, wharf, pier, or jetty—including waggons, trucks, carriages, and locomotive engines—shall not be distrainable for rent due from the tenant of the works, etc., except to the extent of any interest of the tenant therein (35 & 36 Vict. c. 50, §§ 3, 5).

The principle of law as to fixtures is *Quicquid plantatur solo, solo cedit* ("Whatever is affixed to the soil belongs to the soil"). Therefore things affixed to the freehold, such as furnaces, mill-stones, chimney-pieces, kitchen-ranges, stoves, coppers, and the like, cannot be distrained, though it may be that the tenant himself may remove them.

Growing trees cannot be distrained, although in a nurseryman's ground, and removable by the tenant (*a*).

Things cannot be distrained if in such a position that an attempt to distrain would probably lead to a breach of the peace: for instance a horse cannot be distrained whilst a person is actually working or riding it; but it has been held that where a man was merely leading a horse it might be distrained (*b*). The same rule applies to tools and the like in actual use, in the hands of a person at the time. And tools and utensils of a man's trade, and beasts of the plough, are *not* distrainable if there is other sufficient property on the premises (*b*). But beasts of the plough may be distrained for poor rates (*c*). Wearing apparel if not being actually worn may be distrained.

Things delivered to a person exercising a public trade, to be carried, wrought, worked up, or managed in the way of his trade, such as materials delivered to a tradesman to be wrought or made up for the owner, or a watch left to be repaired, cannot be distrained; nor can goods in the possession of a factor for sale, or in the warehouse of a wharfinger or granary-keeper for safe keeping; nor furniture placed in a pantechnicon or depository (*d*); nor can pledges in the care of a pawnbroker (*e*). A smith's anvil is accounted part of the forge, and though not fixed it cannot be distrained; nor can mill-stones in a mill. Goods deposited on the premises of an auctioneer for sale, goods given to a carrier to carry, a bullock sent to a butcher's to be slaughtered (*f*), a horse in a smith's shop to be shod,

(*a*) *Clarke* v. *Culvert*, 3 Moore, 114; 8 Taunt., 481.
(*b*) *Simpson* v. *Hartopp*, 1 Smith, L. C., 385.
(*c*) *Hutchins* v. *Chambers*, 1 Burr., 579.
(*d*) *Miles* v. *Furber*, 42 L. J. Q. B., 41.
(*e*) *Swire* v. *Leach*, 34 L. J. C. P., 150.
(*f*) *Brown* v. *Shevill*, 2 A. & E., 138.

sacks of corn sent to a mill to be ground—these and such like cannot be distrained (*a*). But brewers' casks sent to a public-house with beer, also horses and carriages standing at livery, may be distrained; though a carriage sent to a coach-builder's to be repaired cannot. The distinction is that goods sent to another merely for the purpose of having work and labour bestowed upon them are exempt, the exemption being in favour of trade: while those which are sent to remain on the premises are not (*b*).

As to Distraining Corn and Growing Crops.

Landlords may distrain corn, grass, or other products growing on any part of the land demised (*c*).

Growing crops are only distrainable by Statute (see 2 W. & M. c. 5; 11 Geo. II. c. 19; and 14 & 15 Vict. c. 25, § 2), and must not be sold till they are ripe (*d*).

By the Agricultural Holdings Act, 1883 (see *post*, p. 400), only one year's rent can be distrained for, subject to an extension if it has been customary to defer payment for 3 or 6 months (46 & 47 Vict. c. 61, § 44).

Sheaves or cocks of corn, or corn loose, or in the straw, or hay being in any barn or granary, or upon any hovel, stack, or rick, or otherwise upon any part of the land or ground charged with the rent, may be distrained. So also, all sorts of corn, and grass, hops, roots, fruits, pulse, or other product whatsoever, growing upon any part of the estate demised: and the same may be cut, gathered, made, cured, carried, and laid up, when ripe, in the barns or other proper place on the premises; and if there should be no barn, &c., then in any other barn or proper place as near as may be to the premises. The appraisement thereof is to be taken when cut, gathered, cured, and made, and not before; notice of the place where such distress is lodged, shall, in one week after lodging thereof, be given to the tenant; and if he shall pay or tender the arrears of rent and costs of the distress, before the corn, &c., be cut, the distress shall cease, and the corn, &c., be delivered up (*e*).

Where a tenant is under covenant with the landlord to consume the straw on the premises, it is doubtful whether or not

(*a*) Woodf., L. & T. (13th ed.), 460.
(*b*) *Simpson* v. *Hartopp*, 1 Smith, L. C. (9th ed.), 463.
(*c*) 2 W. & M., Sess. 1, c. 5, § 3; 11 Geo. II. c. 19, §§ 8, 9; 56 Geo. III. c. 50, § 6.
(*d*) *Owen* v. *Leigh*, 3 B. & Ald., 470.
(*e*) *Simpson* v. *Hartopp*, 1 Smith, L. C. (9th ed.), 463

the purchaser, under a distress, must not thresh out the corn on the premises, and leave the straw behind him (*a*).

As to Distraining Machinery.

Machinery upon the premises, although belonging to another person, and lent to the tenant for the purpose of working for the owner, or if let to him for his own purpose, may be distrained; and it has been held that machinery fixed to the wooden floor of a cotton-mill with screws, and some by screws sunk into holes in a stone flooring, and secured by molten lead, are not parcel of the freehold, and are therefore distrainable for rent (*b*). [But as to machinery on agricultural holdings, see *post*, p. 401.]

As to Distraining Cattle.

Cattle may be distrained for arrears of rent, like any other chattels, when upon the premises, or when feeding or depasturing upon any common appendant or appurtenant, or in any way belonging to the premises demised: and it has been decided that where beasts or cattle escape, and come upon land by the negligence or default of their owner, and are trespassers there, they may be distrained immediately by the landlord for rent in arrear (*c*); but when they get upon the land by reason of the insufficiency of fences which the tenant, 'as lessee, ought to keep in repair, the lessor cannot then distrain such beasts or cattle till they have been upon the premises a day and a night, without pursuit by the owner of them; and after actual notice has been given to the owner of their being there and he has neglected to remove them (*d*).

Cattle found upon the land agisting there may also be distrained, but it has been held that cattle which are being driven to a market or fair, and are put into pasture on their way for one night, are privileged from distress (*e*). If the landlord come to distrain, and the tenant, seeing him, drive cattle off the land, the landlord may follow and distrain them, if he had once a view of the cattle on his land; but if the beasts go off the land of themselves before he observe them, he cannot then distrain them. If the distrainer once enter the premises the cattle cannot be driven off to prevent a distress.

(*a*) And see 56 Geo. III. c. 50.
(*b*) *Hellawell* v. *Eastwood*, 6 Ex., 295.
(*c*) Gilb., Distr. (4th ed.), 36; Co., Litt., 47 (*a*).
(*d*) *Poole* v. *Longueville*, 2 Saund., 289.
(*e*) *Tate* v. *Gleed*, 6 Wms. Saund., 290.

Goods and Chattels at an Inn.

Goods and chattels of travellers and others at an inn, if actually within the premises of the inn, are exempt from any distress which may be taken on the innkeeper's goods ; but in a case where a race-horse was distrained for rent at a stable half-a-mile distant from the inn, the distress was held to be legal, and the owner of the horse had no remedy except against the innkeeper (*a*).

A person who hires an unfurnished room at an inn becomes an under-tenant, and his furniture and goods, in such case, would be liable to the landlord's distress upon the innkeeper's goods, unless such under-tenant serve a declaration of ownership on the landlord, under the Lodgers' Goods Protection Act, 1871 (see *ante*, p. 376).

Goods in the Custody of the Law.

Goods in the custody of the law cannot be distrained for rent ; for instance, goods in a bailiff's hands under an execution ; goods seized by process at the suit of the Queen, or taken under an attachment, these and such like are not distrainable ; but it is otherwise with respect to goods taken under a fraudulent execution, such as a fictitious bill of sale, the goods remaining on the premises ; and in cases where the execution is irregular, the goods on the premises may be distrained for rent (*b*).

Animals feræ naturæ, *and Tame Birds.*

Animals *feræ naturæ*—as cats, rabbits, and game—cannot be distrained ; but deer in a private enclosure for the purpose of a sale or profit may be ; and so also birds in cages and aviaries (*c*), and even pheasants if in coops. Dogs may probably be distrained.

Time of Day when a Distress may be made.

A distress for rent cannot be made in the night ; it must be between the hours of sunrise and sunset (*d*). It cannot be made on the same day on which the rent becomes due (*e*). Although, strictly, rent is demandable and payable before sunset on the day whereon it is reserved, yet it is not due till the last minute of the natural day ; unless there be an agreement

(*a*) *Clement* v. *Milner*, 3 Esp., 95.
(*b*) Woodf., L. & T. (13th ed.), 442.
(*c*) Co. Litt. 47 ; *Davies* v. *Powell*, Willes, 46 ; 7 Mod., 249.
(*d*) Co. Litt. 142, and Gilb., 50.
(*e*) 21 Hen. VI. c. 40.

with the tenant empowering the landlord to distrain for it earlier, or to pay rent in advance, or a custom of the country to the contrary. Distress may be made for 6 months after a lease has expired if the tenant remains in possession.

Although rent is demandable and payable before sunset on the day on which it is reserved (as, for instance, on each of the four quarter days of the year) in strictness it is not due till midnight on each of those days (*a*). It cannot be distrained for on the day on which it is payable: and, as a distress for rent cannot be made in the night, the rent cannot be distrained for until after sunrise next day (*b*).

When Doors may be Broken open.

The outer door of a house cannot be broken open in order to make a distress, but if the outer door be open, the person distraining may break open inner doors, or locks, if necessary, to find goods which are distrainable (*c*). Or if a window be open, he may enter through it (*d*); and he may open it further (*e*); but if he break or remove a pane of glass to undo a fastening, he will be a trespasser (*f*). He may climb over a fence to get through an open door.

A landlord is not justified in forcing the padlock of a barn door, nor the outer door of a granary or stable, nor can he break open gates or knock down fences for the purpose of distraining for rent; but he may open doors and locks by turning the key, lifting the latch, or drawing back the bolt, by the usual means adopted by persons having access (*f*). In all cases where the landlord or his agent can get in without committing a trespass or using force, he may lawfully enter and distrain.

If the person distraining, having lawfully entered and seized the goods, be afterwards forcibly expelled, or compelled to leave by violence, he may return with a constable, and on finding the outer door secured, and being refused admittance, may break open the outer door, and complete the distress. But if the person distraining voluntarily abandon the distress, and on returning find the outer door fastened against him, he cannot legally break it open: nor can he take another distress: if he does, he is liable, in either case, to an Action at law (*f*).

(*a*) *Cutting* v. *Derby*, 2 W. Black., 1077; *Duppa* v. *Mayo*, 1 Saund., 287; 2 Salk, 578.
(*b*) Gilb. Distr. (4th ed.), 49.
(*c*) *Browning* v. *Dann*, Bull, N. P., 81.
(*d*) *Nixon* v. *Freeman*, 29 L. J. Ex., 271.
(*e*) *Crabtree* v. *Robinson*, L. R. 15 Q. B. D., 312.
(*f*) Woodf., L. & T. (13th ed.), 461.

Proper Parties to Distrain.

The distress may be made by the landlord himself as of common right, or by a bailiff or agent appointed by him for the purpose. But no person may act as bailiff who does not hold a certificate from a County Court Judge (51 & 52 Vict. c. 21, § 7 ; amended by 58 & 59 Vict. c. 24).

By the Law of Distress Amendment Act, 1895, if any person not holding a certificate levies a distress, he is liable on conviction to a fine not exceeding £10, and liable also in damages (58 & 59 Vict. c. 24, § 2).

A mere authority to receive rent will not authorise a person to distrain for it. A bailiff or agent should be armed with a distress warrant, signed by the landlord. No stamp is needed. A landlord may adopt a distress, and even where it was made in the name of a dead man, adoption by his executor makes it valid (*a*).

Inventory.

After the goods have been seized an inventory must be made of so much as may be sufficient to realise on sale the amount of rent due ; and at the foot of the inventory a notice must be given, that if the tenant or owner of the goods do not, within five days after such distress taken, replevy the same, they will be appraised and sold to pay the arrears of rent. This inventory and notice must be served personally on the tenant, left at the house, or other most conspicuous place, on the premises charged with the rent distrained for. The distrainer then leaves some person in possession of the goods distrained, in order to prevent their removal. It is, however, safer to remove the goods at once, and, in the notice, inform the tenant where they are removed to.

Every broker or other person who levies a distress, must give a copy of all the costs and charges, signed by him, to the person on whose goods the distress is levied.

The following is a schedule of expenses allowed by law in small cases under £20 :—

Levying distress . . . . . 3*s.*
Man in possession, per day . . . . . 4*s.* 6*d.*
Appraisement, whether by one broker or more, 6*d.* in the pound on the value of the goods, and the stamp in addition.
All expenses of advertisements, if any, 10*s.*
Catalogues, sale and commission, and delivery of goods, 1*s.* in the pound on the net produce.

(*a*) *Whitehead* v. *Taylor*, 10 A. & E., 210.

Where the sum distrained for exceeds £20 the costs are arranged on a different scale. Thus, from £20 to £50, 3 per cent.; then up to £200, 2½ per cent.; beyond that, 1 per cent. on the additional amount. And 5*s.* per day for man in possession. (51 & 52 Vict. c. 21.)

When the Goods may be Sold.

A landlord has no power to sell the goods distrained before the expiration of the five days allowed by the Statute; and those days must be calculated inclusively of the last, and exclusively of the day of taking—*e.g.*, if a distress be taken at any hour of the day on 1st January, the sale would not be lawful until the morning of the 7th; a distress taken on Monday or Tuesday cannot be lawfully sold until the following Monday. (2 Wm. & M., sess. 1, c. 5.)

The goods should be removed from the tenant's premises after the expiration of the five days, or the landlord may be deemed a trespasser for keeping them there; unless the tenant give his consent to the goods remaining on the premises beyond the five days (*a*). A landlord cannot sell to himself.

For the purposes of sale, the goods distrained are, at the request in writing of the tenant or owner, to be removed to a public auction room or to some other fit and proper place specified in such request, and there sold. (51 & 52 Vict. c. 21, § 5.)

Formerly, before the goods could be sold, they had to be valued by two reasonably competent appraisers, having no personal interest; but now appraisement is necessary only in cases where the tenant or owner of the goods by writing requires it to be made, and it is to be at his expense. (51 & 52 Vict. c. 21, § 5.)

Tenant's Right to Replevy.

Where goods are distrained, and at the end of the five days appraised, but not sold, the act of appraisement does not take away the tenant's right to replevy them (*b*). Until sale they are the tenant's property.

By the Distress Amendment Act, 1888, the five days are to be extended to a period of not more than fifteen days if the tenant make a request in writing in that behalf to the person levying the distress, and give security for any additional expenses. (51 & 52 Vict. c. 21, § 6.)

(*a*) Woodf., L. & T. (13th ed.), 478.
(*b*) *Jacob* v. *King*, 1 Marsh., 135.

Rescue and Pound Breach.

This occurs where the owner or other person takes away, by force, a thing distrained from the person distraining, after the latter has been actually in possession ; but if he never, in fact, had possession—for example, if he was disturbed in making the distress—it is no rescue (*a*).

The remedy for offences of this kind is provided by Statute, whereby the person aggrieved may recover damages against the offender. (2 Wm. & M., sess. 1, c. 5.)

Wrongful Distress.

Where the goods or cattle of a tenant or other person have been taken as a distress unlawfully, the party so distrained upon may bring an Action at law against the party who took the goods, or against the party who caused them to be taken, or against both.

And by an Act of 1895, a court of summary jurisdiction, on complaint that goods or chattels exempt under § 4 of the Law of Distress Amendment Act, 1888, from distress for rent (see *ante*, p. 391) have been taken under such distress, may, by summary order, direct that the goods and chattels so taken, if not sold, be restored ; or, if they have been sold, that the value thereof be paid by the person who levied the distress or directed it to be levied. (58 & 59 Vict. c. 24, § 4.)

An Action also lies for irregularity in the distress ; but a tenant cannot recover damages in an Action of this kind, if tender of amends has been made before the Action brought ; and actual damage must be shown.

An Action will also lie for an excessive distress; but in order to support an Action of the kind, it must be proved that the excess was considerable, as it is not for every trifling excess that an Action can be brought (*b*). In this case an Action may also be brought against a purchaser.

And the Action will not lie for taking an excessive distress where one thing only could be taken, though greatly exceeding in value the amount required (*c*).

Landlord's Claim when Tenant's Goods taken for Debt.

When the tenant's goods are taken in execution for a debt, not being rent, the party at whose suit the execution is issued is bound to pay to the landlord one year's rent, if so much is due, before any of the goods can be removed from the pre-

(*a*) Bull. N. P., 81.
(*b*) *Sells* v. *Hoare*, 8 Moore, 451.
(*c*) 2 Inst., 106.

mises; and he is not liable to pay more than one year, though several may be in arrear. (8 Anne, c. 14, § 1.)

But no landlord of premises let at a *weekly* rent can claim a lien upon goods taken in execution under the process of any court for more than *four weeks'* arrears of rent; or if the premises be let for any other term less than a year, for more than the arrears for four such terms. (7 & 8 Vict. c. 96, § 67.)

And by another Act, if the goods are taken in execution under the warrant of a County Court, the landlord's lien extends only to arrears of *four weeks* where the tenement is let by the week; the rent of *two terms* where the letting is for any other term less than a year; and the rent of *one year* in any other case. (51 & 52 Vict. c. 43, § 160.)

Where an execution has been issued, and the goods removed without paying the rent, the landlord's remedy is by Action at law against the sheriff; or a shorter remedy is by motion to the Court, that he may have restitution of the goods to the value of his rent (*a*).

Recovery of Rent by Action.

If the tenant occupy under a lease or written agreement, the landlord, instead of distraining, may bring an Action against the tenant; and there are various forms in which the Action may be brought, according to the tenor of the lease or document under which the premises are demised.

A distress for rent is not a waiver of the landlord's right of re-entry, so as to prevent him from maintaining an action to recover possession under § 210 of the Common Law Procedure Act, 1852 (*b*).

Agricultural Holdings Act, 1883.

By this Act (46 & 47 Vict. c. 61), where a tenant has made on his holding any improvement comprised in the First Schedule to the Act (see next page), he shall be entitled on quitting his holding at the determination of a tenancy to obtain from the landlord as compensation for such improvement such sum as fairly represents the value of the improvement to an incoming tenant: provided that there shall not be taken into account as part of the improvement what is justly due to the inherent capabilities of the soil (§ 1).

Compensation will not be payable in respect of any improvement mentioned in the first part of the First Schedule, unless the landlord, or his agent, has consented in writing to such improvement (§ 3).

(*a*) *Levy* v. *Godson*, 4 T. R., 687; *Yates* v. *Rutledge*, 5 H. & N., 249.
(*b*) *Thomas* v. *Lulham*, C. A. (1895) 2 Q. B. 400.

Compensation will not be payable in respect of any improvement mentioned in the second part of the First Schedule, unless the tenant has, not more than three months and not less than two months before beginning to execute such improvement, given to the landlord or his agent notice in writing of the intended work (§ 4).

A tenant claiming compensation shall, two months at least before the determination of the tenancy, give notice in writing to the landlord of his intention to claim; and the landlord may thereupon, before the determination of the tenancy, or within 14 days, give a counter-notice to the tenant of his intention to claim in respect of waste or any breach of covenant. But a landlord may not claim compensation in respect of waste or breach committed more than four years before the determination of the tenancy (§ 6). If the landlord and tenant cannot agree on the amount and mode and time of payment of compensation to be paid, the difference is to be settled by reference, and if necessary by an appeal to the County Court (§§ 6—28).

Where a half-year's notice expiring with a year of tenancy is by law necessary and sufficient for determination of a tenancy from year to year, *a year's notice* so expiring shall *by virtue of this Act be necessary*, unless the landlord and tenant, by writing under their hands, agree that this section shall not apply (§ 33).

It shall not be lawful for a landlord, entitled to the rent of any holding to which the Act applies, to distrain for rent which became due in respect of such holding more than one year before the making of such distress; provided that where it has been usual to defer payment until the expiration of a quarter of a year or half-year, then for the purpose of this section the rent of the holding shall be deemed to have become due at the expiration of such quarter or half-year, as the case may be (§44).

Agricultural or other machinery which is the *bonâ fide* property of a person other than the tenant, and is on his premises under a *bonâ fide* agreement with him, for the hire or use thereof in the conduct of his business, and live stock of all kinds, which is the *bonâ fide* property of a person other than the tenant, and is on his premises solely for breeding purposes, shall not be distrained for rent in arrear (§ 45).

The First Schedule to the Act is divided as follows:—*Part I.—Improvements to which Consent of Landlord is required.*—(1) Erection or enlargement of buildings. (2) Formation of silos. (3) Laying down of permanent pasture. (4) Making and planting of osier beds. (5) Making of water meadows or works of irrigation. (6) Making of gardens. (7) Making or

improving of roads or bridges. (8) Making or improving of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes. (9) Making of fences. (10) Planting of hops. (11) Planting of orchards or fruit bushes. (12) Reclaiming of waste land. (13) Warping of land. (14) Embankment and sluices against floods. *Part II.—Improvements in respect of which Notice to Landlord is required.*—(15) Drainage. *Part III.—Improvements to which Consent of Landlord is not required.*—(16) Boning of land with undissolved bones. (17) Chalking of land. (18) Clay-burning. (19) Claying of land. (20) Liming of land. (21) Marling of land. (22) Application to land of purchased artificial or other purchased manure. (23) Consumption on the holding by cattle, sheep, or pigs of cake or other feeding stuff not produced on the holding.

Market Gardens.

By an Act of 1895 (58 & 59 Vict. c. 27), the provisions of the Agricultural Holdings Act, 1883, so far as they relate to market gardens, have been extended and amended.

Allotments and Cottage Gardens Act, 1887.

Under this Act (50 & 51 Vict. c. 26), upon the determination of the tenancy of a holding the tenant is entitled, notwithstanding any agreement to the contrary, to obtain from the landlord compensation in money for the following matters and things :—(*a*) for crops, including fruit, growing upon the holding, and for fruit trees and fruit bushes which have been planted by the tenant with the previous consent in writing of the landlord ; (*b*) for labour and manure applied to the holding since the last crop in anticipation of a future crop; and (*c*) for drains and structural improvements made with the written consent of the landlord.

If they cannot agree upon the amount and time of payment of compensation, the difference is to be settled by arbitration.

Tenant's Compensation Act, 1890.

By this Act, where land under mortgage is occupied under a tenancy with the mortgagor which is not binding on the mortgagee, the occupier shall be entitled, as against the mortgagee taking possession, to compensation for improvements due to the occupier from the mortgagor; and before the mortgagee deprives the occupier (being a lessee or yearly tenant) of possession, he shall give him six months' notice in writing, with compensation. (53 & 54 Vict. c. 57.)

SECTION II.—VENDORS AND PURCHASERS.

By the Statute of Frauds, contracts for the sale or purchase of lands, houses, &c., must be in writing, signed by the party to be charged, or by his agent, or they cannot be enforced. (29 Ch. II. c. 3, § 4.) Sales of lands and houses by public auction are within the statute.

In the absence of any stipulation to the contrary, a purchaser of real estate (freehold or copyhold) is entitled to require the vendor to produce a 40 years' title. (37 & 38 Vict. c. 78, § 1.)

Biddings at Auctions, Puffings, &c.

Biddings are mere offers, and may be retracted at any time before the hammer is down and before the offer has been accepted (*a*); but the retraction must be made loud enough to be heard by the auctioneer—otherwise the bidder may be liable to an Action in damages for injuring the sale. Any two persons may agree not to bid against each other.

If a lot is withdrawn at the auction, an intending bidder has no claim for expenses incurred in attending the sale (*b*).

Where an estate, or other property of any kind, is advertised to be sold *without reserve*, the sale will be void, as regards the purchaser, if any person be employed as a puffer, and actually bid at the auction; and where a right is reserved for the vendor to bid, either he or any one person on his behalf may bid as he pleases.

A vendor is bound to state whether the sale is without reserve, or whether a right to bid is reserved, or whether there is a reserve price. (30 & 31 Vict. c. 48.)

Where goods of any kind are bid up by a puffer at a public auction, and one condition of the auction is, that the highest bidder shall be the purchaser, the vendor cannot recover the price of a *bonâ fide* bidder (*c*).

A case is recorded where the vendor reserved the right to bid once by himself or his agent, and the auctioneer bid three times; after which the reserve price was stated, and a purchaser bid beyond it, when the property was immediately knocked down to him. On discovering that the auctioneer had bid, he refused to complete the purchase: and it was held that the sale was void at his option.

(*a*) *Payne* v. *Cave*, 2 B. & E. 148.
(*b*) *Harris* v. *Nickerson*, 8 L. R. Q. B. 286.
(*c*) *Crowder* v. *Austin*, 2 C. & P. 208.

Deposit Money.

When a deposit has been paid into the hands of an auctioneer, solicitor, or other person, such person stands in the position of a stakeholder, and is responsible for the payment of the amount to the vendor, in case of the completion of the contract, and also for the return of it to the purchaser in case of the abandonment of the contract, or the neglect of the vendor to fulfil his part of it (*a*).

If an auctioneer or other person pay the deposit to the vendor, and the title turn out to be defective, such auctioneer or other person will, in default of recovering it from the vendor, have to make good the amount to the purchaser, unless it appears to have been the intention of *both* parties that the money should be paid to the vendor (*b*).

When an Action is brought against the auctioneer for the deposit, the purchaser cannot recover interest thereon, although the money has been invested and interest has been made. But it is otherwise when the deposit has been paid to the vendor, and the Action is brought against the latter (*c*).

If the auctioneer make away with the deposit, and become bankrupt, the loss will, in general, fall upon the vendor (*d*).

Liabilities of Purchaser of Real Estate after Contract is signed.

A purchaser is equitable owner of the estate directly the contract is signed, and he must pay the purchase-money, although the estate itself be destroyed before the conveyance is executed: and, on the other hand, he will be entitled to any benefit which may accrue to the estate between the time of contract and conveyance. If, after the contract is signed, and before the conveyance is executed, the house purchased be burned down, the loss will fall upon the purchaser; although the house was insured at the time of the agreement for sale, and the vendor afterwards permitted the insurance to expire without giving notice to the purchaser (*e*). On buying buildings the purchaser should immediately after signing the contract either arrange that the vendor shall give him the benefit of the policy on paying a fair share of the premium, or effect a fresh insurance.

Searches for Entries of Judgments, Charges, &c.

Facilities are now afforded by the Conveyancing Act,

(*a*) Addison, Contracts (8th ed.), 898. (*b*) *Hurley* v. *Baker*, 16 M. & W., 26.
(*c*) *Harrington* v. *Haggart*, 1 B. & Ad., 577. (*d*) Dart, V. & P. (5th ed.), 181.
(*e*) Sugden, V. & P. (14th ed.), 291.

1882, for making search at the Central Office of the Supreme Court for entries of judgments, deeds, &c. The proper officer makes the search required, and files a certificate setting forth the result thereof: which certificate, in favour of a purchaser, shall be conclusive evidence.

By the Act 51 & 52 Vict. c. 51, which came into operation on 1st January, 1889, there was established at the Office of Land Registry, registers (1) of certain writs and orders affecting land, (2) of deeds of arrangement affecting land, and (3) of certain land charges; and any such orders, deeds of arrangement, or charges are to be void as against purchasers for value unless registered under the Act.

Death of Parties to a Purchase Contract.

The death of the vendor or purchaser after the contract and before the conveyance is signed, is immaterial. If the vendor die before payment of the purchase-money, it will go to his executors, and form part of his personal estate. If the purchaser die, his executors must complete the purchase, and the estate will go just as if the conveyance had been executed in the purchaser's lifetime.

Specific Performance of Contracts.

If either of the parties to a contract fails to complete his part, the remedy of the other is by Action for damages or to compel specific performance.

Relief will be refused if the party seeking it was guilty of fraud, misrepresentation, or concealment at the time of making the contract (*a*).

Inadequacy of value is no objection to a specific performance, but it may be an element in considering whether the contract was obtained by fraud, or was really voluntary. The Court will not enforce an incomplete voluntary contract (*b*).

Specific performance of *oral* contracts for the sale of lands will, in certain cases, be decreed where there has been a part performance by delivery of possession, or laying out money on the property with the privity of the vendor, and this notwithstanding that the contract is required by the Statute of Frauds to be in writing (*c*). But paying a deposit is not part performance.

(*a*) *Willingham* v. *Joyce*, 3 Ves., 168; *Shirley* v. *Stratton*, 1 Bro., C. C., 440; *Clermont* v. *Tasburgh*, 1 Jac. & Walk., 112.

(*b*) *Callaghan* v. *Callaghan*, 8 Cl. & Fin., 374.

(*c*) *Parker* v. *Taswell*, 2 De Gex. & J., 571. *Willis* v. *Stradling*, 3 Ves., Jun., 381.

A specific performance of the agreement will be enforced, if the contract was fair at the time it was made; however unreasonable it may afterwards become (*a*).

Misrepresentations and Misdescriptions.

Where a person has been induced to enter into a contract by a material misrepresentation of the other party, he is entitled to have the contract set aside, and not merely to have the representations made good (*b*).

Although the conditions of sale provide that errors and misstatements shall not vitiate the sale, yet if they or the particulars be erroneous and misleading, or contain any gross misrepresentation by the vendor, or any important misdescription as to the property, the purchaser is not bound to complete his contract, but may recover back his deposit; and an Action for specific performance of the contract cannot be sustained.

Unreasonable and Inadequate Price.

Though a purchaser is not bound to acquaint the vendor of any latent advantage in the estate, yet any misleading statement made for the purpose of obtaining an estate at an inadequate price may be deemed fraudulent.

When parties deal for an estate, the purchaser may use his own knowledge, and is not bound to give the *vendor* information as to the value of the property; and if the purchaser alone knows there is a mine under it, and the vendor knows nothing of the mine, the purchaser is not bound to give him any information of it (*c*). But if a purchaser knows a fact which will increase the value of the vendor's interest, such as the mortal illness of a prior tenant for life, he must disclose it.

Where an agreement was made for sale and purchase of land at a half-penny per square yard, which upon after-calculation came to about £500, the real value of the land being £2,000, and the purchaser prevailed on the vendor to sign the contract before actually calculating it, the contract was set aside (*d*).

Fraud or Concealment by the Vendor.

If a man be induced to give an unreasonable price for an estate, by the fraud or misrepresentation of the vendor, or by

(*a*) Sugden, V. & P. (13th ed.), 230.

(*b*) *Rawlins* v. *Wickham*, 1 Giff., 355; *Charlesworth* v. *Jennings*, 34 Beav., 26; *Hart* v. *Swain*, 47 L. J. Ch., 5; 7 L. R. Ch. D., 42.

(*c*) *Fox* v. *Mackreth*, Bro., C. C., 410, 420.

(*d*) *Deane* v. *Rastron*, 1 Ans., 64.

concealment of a defect in the estate, the Court will not compel him to perform the contract (*a*).

In a case where the vendor of a house, knowing of a defect in the main walls, plastered it up, and papered it over for the purpose of concealing it from the purchaser; it was held to be a direct fraud, which enabled the purchaser to recover back the purchase-money (*b*).

Mistake or Misunderstanding as to Parcels of Land.

After conveyance a vendor has, as a rule, no remedy if he finds that he has made a mistake, unless he has been actively misled by the purchaser, or unless he has conveyed more than either party intended in the contract.

If an estate be sold at so much per acre, and it afterwards appears that there is a deficiency in the number of acres conveyed, the purchaser will be entitled to compensation; although the estate may have been estimated at that number in an old survey (*c*).

Before purchasing land a purchaser should make careful inquiries, as there may be certain defects or incidents of the property which inquiry would bring to light, and as to which he will not be entitled to compensation should he afterwards discover them.

In a case where a meadow was sold to the owner of a house and ground adjoining, without any notice of a *foot-path* round it (called an easement), and also one across it (which of course materially lessened its value), the Court ordered a specific performance of the contract against the purchaser, as he had been too careless to make inquiry. Had he used ordinary caution he would have discovered the easement (*d*).

A purchaser is bound to be cautious, because he has an opportunity of inspecting the property before concluding his bargain; and in every such case the principle *Caveat emptor* ("The purchaser must look after himself") applies (*e*.)

Purchase of Estate with existing Rights.

If an estate be subject to a *right of sporting*, or a *right of common*, or a right to dig for mines, or a right on the part of third persons to have extensive underground watercourses, and to enter upon the land to open, cleanse, and repair such water-

(*a*) *Attwood* v. *Small*, 6 Cl. & Fin., 395.
(*b*) *Shirley* v. *Stratton*, 1 Bro., C. C., 440.
(*c*) Sugden, V. & P. (14th ed.), 324.
(*d*) *Oldfield* v. *Round*, 5 Ves., 508; *Legge* v. *Croker*, 1 Bal. & B., 506.
(*e*) *Goodtitle* v. *Morgan*, 1 T. R., 762.

courses; and the purchaser, in ignorance of those rights, contract for the estate, he may, as soon as he is aware of their existence, in the absence of stipulation in the contract, repudiate his bargain; and he cannot be compelled to take the estate with an abatement on the amount of the purchase-money (*a*).

Purchase of Estate—Cutting down Timber, &c.

If, after an agreement has been entered into for the sale and purchase of an estate, and before the completion of the contract by the execution of the deed of conveyance, the vendor cut down timber, the purchaser may refuse to complete his contract (*b*).

If, on the purchase of an estate, it is stipulated that the purchaser shall pay for the timber growing on the land, he must pay for all the trees which, by the custom of the country, are considered to be timber (*c*).

Timber blown down or minerals quarried between the time of the contract and the completion of the purchase will belong to the purchaser of the estate (*d*).

Joint Purchasers.

Where two or more persons make a joint purchase for the purpose of a joint undertaking or partnership, either in trade or any other dealing, although they are joint tenants at law, in equity they will be considered as tenants in common, and the survivors as trustees for those who are dead (*e*).

If two persons enter into a joint contract for the purchase of an estate to *them and their heirs*, and have paid or contracted to pay the purchase-money in equal portions, and one of them die, the *surviving* purchaser will be solely entitled to the *benefit of the contract*. But where the proportions of the money are *not* equal, this makes them *in the nature of partners;* and however the legal estate may survive, yet the survivor will be considered but as trustee for the owners, in proportion to the sums advanced (*e*).

If two make a purchase and one of them lay out money in improvements and then die, this will create a lien on the land in favour of the representative of him who advanced it.

(*a*) *Seton* v. *Slade*, 2 White & T., L. C. Eq., 542.
(*b*) *Magennis* v. *Fallon*, 2 Mol., 584, 585.
(*c*) *Duke of Chandos* v. *Talbot*, 2 P. Wms., 601.
(*d*) *Poole* v. *Shergold*, 1 Cox, 273.
(*e*) *Lake* v. *Gibson*, and *Lake* v. *Craddock*, 1 White & T., L. C. Eq. (6th ed.), 215, 217.

Purchase of Estate by Agent or Attorney.

An agent will not be permitted to reap an advantage by becoming secret vendor or purchaser of property which he is authorised to purchase or sell for his principal (*a*).

If an attorney or other person be employed by another to bid for an estate, and such attorney or agent having purchased the estate, claim a right to keep it, he may be compelled to convey it to the person who employed him to bid; and this too, though the attorney or agent purchased the estate at a less price than that named by the person who employed him. If an attorney or agent bid more for an estate than he was authorised to do, he himself will be liable; and the party who employed him is not bound to accept it (*b*). But if he was not expressly limited as to price, his employer would be bound (*c*).

Delay in completing Purchase.

The purchaser is entitled to the rents and profits of the estate from the time fixed for completion of the purchase, whether he then completes and takes possession or not. If the delay be the fault of the purchaser, he must pay interest on the purchase-money, even though it has been lying idle and the estate has been unproductive: but not if it be the fault of the vendor (*d*).

Costs of Conveyance.

Unless there is an express stipulation to the contrary, the expense of preparing the conveyance falls on the purchaser; but the expense attending the execution of the conveyance is borne by the vendor, who is bound to procure the execution by all necessary parties (*e*). The maximum costs in all conveyancing matters are fixed by the Orders under the Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44).

Vendors and Purchasers of Leasehold Property.

Where leasehold property which is offered for sale in separate lots is all held under one lease, the vendor must state that fact in plain terms in the conditions of sale or particulars, or he cannot compel a purchaser to complete; but the purchaser may claim a return of the deposit-money with interest (*f*). The reason is that unless the reversioner consents to apportion the rent, he may levy for the whole rent on any lot.

(*a*) Story, Eq. Jur., 315; *Cave* v. *Mackenzie*, 46 L. J. Ch., 564.
(*b*) Amb., 408; 10 Ves., 400.
(*c*) *Hicks* v. *Hankin*, 4 Esp., 114.
(*d*) Sugden, V. & P. (13th ed.), 627.
(*e*) Same, p. 451.
(*f*) *Sheard* v. *Venables*, 36 L. J. Ch., 922.

By the Conveyancing Act, 1881, the purchaser of a leasehold has no right to call for the title to the reversion. (44 & 45 Vict. c. 41.)

Sale and Purchase of Reversionary Interests.

No purchase made *bonâ fide* and without fraud or unfair dealing of any reversionary interest in real or personal estate, can now be opened or set aside merely on the ground of undervalue. (31 & 32 Vict. c. 4.)

Transfer of Land.—Registration of Title.

Facilities are now afforded by the Land Transfer Act, 1875 (*a*), whereby, by registration of the title, land, houses, and estates may be conveyed or mortgaged by simple and concise instruments consisting only of a few lines. This may be accomplished by obtaining a "registered" title, absolute or possessory, the former of which, when once obtained, can never be disputed, whatever the estate. The Act being optional, landed proprietors and purchasers of freehold estates can do as they please as to availing themselves of the new system.

Until recently, the Act referred to was in practice very little used, but under the Land Transfer Rules, 1889, many additional facilities were given both for the first registration of the titles of owners of land, and for the registration of subsequent transactions in regard to the land so registered.

The Act of 1875 has now been amended by the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), in various respects, as regards both the law affecting the devolution of landed property and the provisions of the principal Act concerning registration of title.

By the same Act of 1897 it is provided that Her Majesty may, by Order in Council, declare, as respects any county or part of a county to be mentioned in such Order, that, on and after a specified day, registration of title to land is to be compulsory on sale. It is further provided (amongst other machinery for enacting compulsory registration) that in the case of every Order proposed to be made for that purpose six months' notice shall be given to the Council of the county to which such Order is proposed to be applied, and opportunity afforded the Council for considering the proposal.

(*a*) 38 & 39 Vict. c. 87. The previous Land Registry Act of 1862 (25 & 26 Vict. c. 53) is now practically at an end, except as to land already registered under it.

The work of registration is carried out at the Office of Land Registry, 34, Lincoln's Inn Fields, London. All applications can be conducted either with or without professional help.

"Absolute" and "Possessory" Title—how distinguished.

"Absolute" title is given by registration under the Act of 1875 wherever proof of the applicant's title is shown to the Registrar in a manner similar to that used on sales and mortgages. But where a title appears to be a good holding title, or to have been duly investigated on a recent sale or mortgage, the Registrar has a wide discretion given him by the Act (38 & 39 Vict. c. 87), which removes many difficulties.

"Possessory" title is given to any person who is in possession of land (hence the name), and who will make a statutory declaration that he is entitled to it.

A landowner registered with absolute title will find (it is claimed) that he can sell or mortgage without legal assistance, delay, or expense. The purchaser also can act without professional help, at a small expense.

A landowner registered with "possessory" title can transfer and charge his land by the same instruments and with the same simplicity in point of form as if the title were absolute. As regards investigation of title, the registration prevents any adverse claims arising on the title subsequently to registration: *but it is not retrospective;* it does not exclude possible adverse claims existing or capable of arising *at the time of the first registration of the land.* Consequently for the first few years after such registration purchasers and mortgagees should as a rule require to be satisfied that no such claims exist (*a*).

Registry of Deeds affecting Land in Middlesex and Yorkshire.

The registration of assurances, wills, and other instruments affecting lands situate in the counties of Middlesex and York —in the Registries established in London, Wakefield, Beverley, and Northallerton, for that purpose—is still a necessary formality for the security of transactions affecting land in those counties, except as to lands registered under 25 & 26 Vict. c. 53, § 104, or under 38 & 39 Vict. c. 87, § 127, as to which statutes see note to p. 410, *ante.*

The Middlesex Registry of Deeds is now made part of the Land Registry.

Voluntary Settlements.

It has long been settled law that a voluntary conveyance—that is, a conveyance as a free gift without any pecuniary or other

(*a*) An official notice has been issued from the Land Registry, reminding purchasers and mortgagees that it is no longer safe to deal with land reputed to be unregistered without searching the index map kept at the office to see whether it is registered or not.

consideration—is to be regarded as "fraudulent or covinous" within the meaning of the Act 27 Eliz. c. 4, and so liable to be set aside in case of a subsequent conveyance to a purchaser for value made by the grantor of the voluntary conveyance (*a*). The effect of the statute of Elizabeth, as thus interpreted, was that a person who had made a voluntary settlement of land, even on his own children—(a settlement made in consideration of marriage, however, is not a "voluntary" settlement, marriage being a good consideration)—might afterward sell the same property to any purchaser, and the latter, although he might have had notice of the settlement, would hold the land free of any claim by the persons on whom it had been previously settled (*b*).

But by the Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 93) it is now provided that no voluntary conveyance of any lands, tenements, or hereditaments, whether made before or after the passing of the Act (29th June, 1893), if in fact made *bonâ fide* and without any fraudulent intent, shall hereafter be deemed fraudulent or covinous within the meaning of 27 Eliz. c. 4, by reason of any subsequent purchase for value (§ 2).

But this enactment is not to apply in any case in which the author of a voluntary conveyance has subsequently, but before the passing of the Act, disposed of or dealt with the same lands, tenements, or hereditaments to or in favour of a purchaser for value (§ 3).

By another Act (13 Eliz. c. 5) it was provided that grants of lands *or goods* made with intent to defraud creditors of the grantor should be void as against such creditors; and a voluntary settlement of property, whether land or other than land, will accordingly be held void as against creditors if, without counting the settled property, the settlor was in fact insolvent at the time he made the settlement (*c*).

But if the settlement be good as against the settlor, he cannot undo it. Thus, where a young lady, not immediately contemplating marriage, transferred a sum of stock into the names of Trustees, in trust for herself until she should marry, then to her separate use, and after her decease to her children, and she afterwards, being still unmarried, applied to the Court to have the settlement delivered up to be cancelled, the Court refused to release her (*d*).

(*a*) 2 Dart's Vendors and Purchasers, 6th ed., pp. 1003, 1008.
(*b*) *Upton* v. *Bassett*, Cro. Eliz. 444; 2 Dart's V. and P., 6th ed., 1019.
(*c*) *Skarf* v. *Soulby*, 1 Mac. & Gord., 364.
(*d*) *Bill* v. *Cureton*, 2 My. & Keen, 403.

SECTION III.—EASEMENTS AND PRESCRIPTIVE RIGHTS.

Nature of Easements.

An easement is a liberty or privilege which one landowner has of another by charter, grant (which may be express or implied), or prescription—such as a right of way over the latter's land, a right to support from his wall or buildings, a right to use a well or watercourse, a washing-place, a drying-ground, and such like. The land or tenement to which the right appertains is called the "dominant" tenement; and the land or tenement upon which the obligation is imposed is called, in corresponding terms, the "servient" tenement. The easement is for the benefit of the dominant owner alone, and if abandoned the servient owner has no right to complain.

Claims and Rights to Easements.

By the Prescription Act (2 & 3 Will. IV. c. 71, § 2), claims arising by custom, prescription, or grant, to a right of way or to any watercourse, or the use of any water, upon, over, or from any land or water, are "not to be defeated" after twenty years' exercise or enjoyment, and after forty years such rights will be "deemed absolute and indefeasible."

By the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41, § 62), the grantor of an easement may limit the duration of the grant.

The Real Property Limitation Act, 1874, which limits the right of Action for the recovery of land to 12 years, has no application to easements: therefore 12 years' enjoyment of an easement does not of necessity give any right as against the owner of the land. (37 & 38 Vict. c. 57.)

Rights of Way, how Acquired.

Rights of way may be acquired by grant made by some person who had the power to grant. Such rights may also be acquired by user; and after 20 years' enjoyment the law presumes a grant made before the user commenced (*a*): but as such user is not continuous, and may vary at different times, great difficulties are presented both in law and in fact in determining the amount of right conferred by it. A man may allow the

(*a*) *Moore* v. *Rawson*, 3 B. & C., 339.

passage of foot passengers and carriages near his house, and yet refuse permission to drive cattle along the same road (*a*). So also a right of way on foot and for horses, oxen, cattle and sheep, does not give any right of way to cart or carry manure (*b*). And a man having a right of way to one close of land, does not thereby acquire the right of using it for the purpose of going to another close (*c*).

Rights of way are in their extent susceptible of almost infinite variety: they may be limited both as to intervals at which they may be used (as a way to a church), and the actual extent of user authorised (as a footway, horseway, or carriage-way). Thus a way may be granted for agricultural purposes only, or for the carriage of coals only, or for the carriage of all articles except coals (*d*).

Rights of Way, how Lost.

Where the right has been acquired by user, it may be lost by non-user (*e*); for after a cessation of enjoyment of the right for a long period of time, the law presumes a release of the right: particularly if the non-user be in consequence of something adverse to the user.

As to the length of time requisite to *extinguish a right* by mere non-user, it appears to have been the opinion of Lord Coke (*f*) that a title acquired by prescription could only be lost by interruption or non-user during a period equal to that required for its acquisition. The point does not appear, however, to have ever been expressly decided by the English Courts: though an American case has occurred which decides that a right of way acquired by user is not lost by non-user for a less period than 20 years (*g*).

Obstructions to the Enjoyment of Rights of Way.

If a right of way be obstructed, the party enjoying such right may remove the obstruction for the purpose of using the way. An obstruction (of a permanent character) to a way, if acquiesced in for 20 years, would be evidence of a renunciation and abandonment of the right of way (*h*).

(*a*) Gale, Easements (5th ed.), 344; *Ballard* v. *Dyson*, 1 Taunt., 279.
(*b*) *Brunton* v. *Hall*, 1 Q. B., 792.
(*c*) Roll. Abr., Chemin. Private Pl., 3; and see *Colchester* v. *Roberts*, 4 M. & W., 769, at p. 774.
(*d*) Gale, Easements (5th ed.), 340.
(*e*) *Moore* v. *Rawson*, 3 B. & C., 341; *Doe* v. *Hilder*, 2 B. & Ald., 791.
(*f*) Co., Litt., 114 b.
(*g*) Washburn, *Easements*, 645.
(*h*) *Bower* v. *Hill*, 1 Bing., N. C., 555.

Every person who sustains an injury from an unknown and dangerous obstruction to the enjoyment of a private right of way (as by a heap of building materials being left thereon) may bring an Action for damages; and this whether the obstruction be caused by the proprietor of the land over which the way exists, or by a stranger (*a*).

Rights of Water.—Watercourses.

Every landed proprietor has a right to use the water flowing over or through his land by a natural stream; but he must use it so as not to injure or interfere with the rights of other proprietors over whose land the stream runs, unless he has gained a title by prescription or otherwise so to use it (*b*).

A watercourse may be either a real or an incorporeal property. For example, if a miller purchase the water adjoining to his mill, as an easement, the soil being left in the hands of the original proprietors, he thereby gains an incorporeal hereditament: but if he were to buy the land itself over which the water flowed, he would then have a corporeal property; and the right which he would possess in respect of the watercourse would be real (*c*).

The exclusive enjoyment of water in any particular manner, for 20 years, affords a conclusive presumption of right (*d*).

A right to a watercourse may be established, although an interruption has actually occurred within 20 years (*e*). No lapse of time will substantiate a right to exclude the public from the use of a navigable river; for there the rights are quite different, the soil being in the Crown, and the use the common inheritance of the people (*f*).

A watercourse devoted to public purposes cannot be dispensed with, so long as the public derive a benefit from it. If the water claimed have been enjoyed from time immemorial, the right to it may be considered as very fully established.

As to the length of time which must elapse before a grant will be presumed, a user of 20 years would suffice, in the absence of contradictory evidence (*g*).

A *conduit* will pass with a house, and the owner may come

(*a*) *Corby* v. *Hill*, 27 L. J., C. P., 318.
(*b*) *Embrey* v. *Owen*, 6 Ex., 370; *Chasemore* v. *Richards*, 5 Jur. (N. S.), 873.
(*c*) Woolrych on Waters (2nd ed.), 146.
(*d*) *Per* Lord Ellenborough, in *Balston* v. *Benstead*, 1 Camp., 463.
(*e*) *Hall* v. *Swift*, 4 Bligh, N. C., 381.
(*f*) Woolrych on Waters (2nd ed.), 48 *et seq.*
(*g*) *Balston* v. *Benstead*, 1 Camp., 463.

upon the land of another to repair and amend the pipe; and this without special prescription or special grant; but he must come at reasonable times (*a*).

A *sliding fender* used to prevent the escape of water from a mill-stream does not necessarily become part of the freehold (*b*).

Underground Water and Wells.

The owner of land through which water flows in a subterranean course cannot sustain an Action against a landowner who, in carrying on mining operations on his own land, in the usual manner, drains away the water from his neighbour's well and leaves it dry (*c*).

Defilement of Streams.

The owner or occupier must not defile the water and render it unfit for use, to the damage of other persons accustomed to the use of the water in a pure state. But where proof can be established of uninterrupted use of the stream as a drain or sewer for 20 years, no Action will lie for fouling it.

A wrongful defilement of a stream is an injury to the rights of others, in respect of which damages may be recovered; and this although no actual damage can be proved; because a continuance of the practice without interruption would, in course of time, establish a right. An Injunction will be granted to restrain the pollution of water, where the aggrieved party prefers to seek his remedy by Injunction rather than under any Statute, of which there are several available.

The owners of lands adjoining a river who have watering places for cattle, but no property in the bed or soil of the river, are interested in the river, and may maintain an Action for fouling the water to their prejudice (*d*).

But a proprietor of land having acquired a right to discharge pure water into his neighbour's land, has no right to discharge water in a polluted state, and would be liable to an Action for so doing (*e*). And where a person has a right to use a drain for clean water, and discharges foul water therein, the other may obstruct the drain altogether, in order to prevent the passage of the foul water (*f*). [See also *post*, p. 527, under "Pollution of Streams and Rivers."]

(*a*) *Browne* v. *Nichols*, Mo., 682.
(*b*) *Wood* v. *Hewitt*, 15 L. J. Q. B., 247, 248.
(*c*) *Acton* v. *Blundell*, 12 M. & W., 324.
(*d*) *Oldaker* v. *Hunt*, 6 De G. M. & G., 376.
(*e*) *Wood* v. *Waud*, 3 Ex., 748.
(*f*) *Carkell* v. *Russell*, 26 L. J. Ex., 34.

Obstructions to Watercourses.

If a man use his right of water so as to injure the rights or interests of his neighbour, without a lawful cause for so doing, he will be answerable for any damage which he may occasion. And *à fortiori*, if a stranger should interfere with the enjoyment of an easement to which he has no manner of title, he will be placed in the like condition (*a*).

Running water being *publici juris*, whoever first appropriates to his own use any part of a stream which had not previously been made the subject of a private right, may maintain an Action for disturbance of his possession, although his dominion over the water has existed for a period short of 20 years (*b*).

Ownership of the Soil of Rivers.

As a general principle, the soil of ancient navigable rivers, where there is a flux and reflux of the sea, belongs to the Crown (*c*) ; and that of other streams to the subject ; that is, to the owners of the adjacent lands, to each respectively as far as the middle of the stream (*d*).

Rights of Common.

A right of common is a profit which a man has in the land of another ; it is claimable only by grant or prescription. After 30 years' enjoyment a right of common cannot be defeated by merely showing that it commenced within time of memory : and after 60 years' enjoyment the right is absolute and indefeasible, unless it appears that the same was taken and enjoyed under some deed or writing. (2 & 3 Wm. IV. c. 71, § 1.)

Common Appurtenant of Pasture.

Common appurtenant is a right derived from the possession or occupation of land, of depasturing a certain or limited number of beasts upon the waste or uninclosed lands of the lord of the manor, or an adjoining proprietor, and is claimable by grant or prescription. If the commoner exceed his legal rights, and turn on more beasts than custom allows, he is liable to an Action (*e*).

Depasturing Diseased Sheep on Commons.

Any person turning out, keeping, or depasturing upon any

(*a*) Woolrych on Waters (2nd ed.), 254.
(*b*) *Bealey* v. *Shaw*, 6 East, 208.
(*c*) 1 Sid., 86.
(*d*) Hale, De Jure Maris, 1.
(*e*) *Hobson* v. *Todd*, 4 T. R., 71.

forest, chase, wood, moor, marsh, heath, common, waste land, open field, or other undivided or uninclosed land, any sheep or lambs infected with scab or mange, or which have been so infected within 6 months previously, will be liable to a penalty not exceeding £10, nor less than 20s., or imprisonment. (38 Geo. III. c. 65, § 1.)

Common of Turbary.

Common of turbary, or the right of privilege of cutting and carrying away turf, is generally limited to such quantity as is sufficient to burn in the ancient dwelling-house to which the right pertains: so that the commoner has no right to cut and carry away turf for sale (*a*).

Test of a Right or Easement.

The true test of these and other such rights is, that they are exercised as of right, and without asking leave: the very fact of asking leave from time to time, breaks the continuity of the enjoyment as of right; because each asking is an admission that the asker has no right (*b*).

Rights Claimable by Immemorial Custom.

A custom must be certain, reasonable in itself, commencing from time immemorial, and continued without interruption (*c*).

A regular usage for 20 years, uncontradicted, is sufficient to warrant a Jury in finding an immemorial custom (*d*).

It has been held that a custom claimed by the inhabitants of a particular district to go upon the land of another to take or use water from a spring or well, or to wash and water cattle in a pond, is a good custom. Also that a custom for the inhabitants of a village to resort to village greens, or uninclosed waste lands, or commons, for village sports, and for the purpose of recreation and amusement, is a good custom.

So also a custom for the inhabitants of a parish to erect a maypole on certain ground of a landowner within the parish, and to dance about the same is reasonable and lawful (*e*).

In a navigable river the soil of which belongs to the Crown, the public may, *primâ facie*, have a right of fishing (*f*). But a

(*a*) 6 Co., 36 (*b*), 37 (*a*); Noy's R., 145.
(*b*) *Tickle* v. *Brown*, 4 A. & E., 382; *Bright* v. *Walker*, 1 C. M. & R., 219.
(*c*) 1 Black., Comm., 76; *Rogers* v. *Taylor*, 26 L. J. Ex., 203.
(*d*) *Jenkins* v. *Harvey*, 1 C. M. & R., 877; *Duke of Beaufort* v. *Smith*, 4 Ex., 450.
(*e*) *Hall* v. *Nottingham*, 45 L. J. Ex. D., 50.
(*f*) *Reg.* v. *Stimpson*, 32 L. J. M. C., 208.

custom for the inhabitants of a parish to angle and catch fish in a pond cannot be claimed; for such a right vested in a multitude of persons would be destructive of all the fish (*a*).

Where the public at large had from time immemorial fished in a non-navigable river, and the Defendant claimed a right to fish there as one of the public, it was held that no such right could be acquired by user, however long continued (*b*).

Title by Prescription.

A title to an easement by prescription may be acquired by use and time, and such is allowed by law. But no prescription can give a title to the land itself. Nothing but incorporeal hereditaments can be claimed by prescription, such as rights of way, rights of common, rights of fishing, and such like.

A prescriptive right to a pew in church, as appurtenant to an ancient messuage, may be established by immemorial use and enjoyment; although the messuage be not within the parish (*c*).

By the Prescription Act, proof of the exercise or enjoyment of any right or easement must be carried back for such number of years as may be applicable to the easement. For instance, the claim to any way or other easement, or to any watercourse, or the use of any water, upon, over, or from any land, must have been enjoyed without interruption 20 years; and if for 40 years, then the right is to be deemed absolute, unless enjoyed by some consent expressed by deed or writing. (2 & 3 Wm. IV. c. 71, § 2.)

Rights to Light and Air.

An absolute right to the use of light for a dwelling-house or other building is obtained by the enjoyment of it for 20 years without interruption, unless the right was enjoyed by consent in writing (*d*). But if a person enjoying an easement of the kind alter or enlarge his lights, or add new ones, the owner of the adjacent property may obstruct them until they are reduced to the original form and number, but no longer (*e*). Ancient lights cannot, however, be obstructed merely because the owner has opened new ones; but only where, in obstructing new lights, he unavoidably obstructs the ancient ones

(*a*) *Bland* v. *Lipscombe*, 4 E. & B., 713, note (*c*).
(*b*) *Hudson* v. *McRae*, 33 L. J. M. C., 65.
(*c*) *Lousley* v. *Hayward*, 1 Y. & I., 583.
(*d*) 2 & 3 Will. IV. c. 71, § 3; *Salters' Co.* v. *Jay*, 3 Q. B., 190; *Merchant Taylors' Co.* v. *Truscott*, 25 L. J. Ex., 173.
(*e*) *Garritt* v. *Sharp*, 3 A. & E., 325.

also (*a*). The owner of ancient lights may improve his light, but must not increase it (*b*). The right to ancient lights is abandoned by closing them up with that intention (*c*).

A right to the passage of air is not an easement, and no prescriptive right to air can be acquired under the Statute (*d*). There can be no prescription for an easement of light and air over the open land of another owner (*e*).

Where the owner in fee of a house and of an adjoining field, over which field the light required for the windows of the house passed, devised by his will the house to one person and the field to another, it was held that the right to light over the field passed to the devisee of the house, and that the devisee of the field had no right to obstruct the other's light (*f*).

Where the light of a dwelling-house or other building has been unlawfully obstructed for 6 years or more, without any steps being taken, the Court will be reluctant to interfere (*g*).

The owner of a house in a narrow street may be restrained by Injunction from raising it such a height as will injuriously obstruct the access of light to the windows of the houses or buildings opposite ; but the application for the Injunction must be made promptly, and before the building complained of is completed (*h*). In the case of a building used for religious services, and decorated with mural mosaics, it was held that the erection of a pile of buildings close to the chapel, of such a height as would sensibly diminish the light available for religious services and for viewing properly the decorations of the chapel, was an interference with "access of light" within the meaning of the Prescription Act, and an injunction to restrain such interference was granted accordingly (*i*).

Noise and Vibration.

Prescriptive rights to make such a noise and cause such a vibration to adjoining premises as to create a nuisance cannot be acquired unless the party against whom the right is claimed might have brought an Action or prevented the exercise of it. And therefore, where a confectioner had for

(*a*) *Binckes* v. *Pash*, 31 L. J. C. P., 121.
(*b*) *Jones* v. *Tapling*, 31 L. J. C. P., 342.
(*c*) *Moore* v. *Rawson*, 3 B. & C., 332.
(*d*) *Potts* v. *Smith*, 38 L. J. Ch., 58.
(*e*) *Webb* v. *Bird*, 31 L. J. C. P., 335.
(*f*) *Phillips* v. *Low* (1892), 1 Ch., 47.
(*g*) *Gaunt* v. *Fynney*, 42 L. J. Ch., 122.
(*h*) *Hackett* v. *Baiss*, 45 L. J. Ch., 13.
(*i*) *Attorney-General* v. *Queen Anne's Mansions Co.*, L. T., 60, 759.

20 years and upwards used heavy pestles and mortars which produced noise and vibration over an adjoining yard, and afterwards the lessee of the yard, a physician, built a consulting-room in the yard, when the noise and vibration became a serious nuisance to him, it was held that no easement or right to make the noise and vibration had been acquired; and an Injunction restraining the nuisance was granted (*a*).

Hedges, Ditches, Walls, and Fences.

As a general rule in agricultural districts, the hedge which separates two fields or enclosures belongs, *primâ facie*, to the proprietor of the field on whose side there is no ditch; but if there be no ditch on either side, then the ownership of the fence must be proved by evidence of acts of ownership (*b*).

Where the hedge has ditches on both sides, it usually belongs to the owners on each side; and if so, neither of the two can grub it up: and each must contribute equally to the repairs of it. But if there has been a custom for the one owner only to repair the hedge, such is *primâ facie* evidence of ownership (*c*).

No man making a ditch has any right to cut into his neighbour's land: in digging the ditch he must throw the soil upon his own land, and so form a bank upon which he may plant or make a hedge. If in making the ditch he cut beyond the extremity of his own land, he is a trespasser, or if he do so on cleaning out, widening, or deepening the ditch (*d*).

Where the origin of a wall separating adjoining lands is unknown, it belongs to the two owners in equal moieties (*e*).

If a house or building be separated from other premises by a wall, the wall usually belongs to the owner of the house or building, and he is bound to keep it in repair (*f*).

Fruit Trees Overhanging Another's Land.

If fruit trees overhang another's land, and the fruit fall upon his land, the owner may, with the permission of the other, enter and retake it. The fruit belongs to the owner of the tree, and the other has no right to it, unless by custom, though it fall upon his land. If the owner or occupier of the adjoining land refuse to deliver up the fruit, or to allow the owner to enter and take it, the owner will be justified in enter-

(*a*) *Sturges* v. *Bridgman*, 48 L. J. Ch. D., 785.
(*b*) *Guy* v. *West*, 2 Sel., N. P., 1287.
(*c*) *Voyce* v. *Voyce*, Gow, 201.
(*d*) *Vowles* v. *Miller*, 3 Taunt., 137.
(*e*) *Wiltshire* v. *Sidford*, 8 B. & C., 259 *n.*
(*f*) *Matts* v. *Hawkins*, 5 Taunt., 20.

ing without permission; but not by force, nor must he commit any damage in so doing.

Roots or Branches on Neighbour's Land.

In the absence of express stipulation, an easement will not be acquired by user so as to compel a man to submit to the penetration of his land by roots of trees planted on his neighbour's soil (*a*).

"The owner of a tree has no right to prevent a person, lawfully in possession of land into or over which its roots or branches have grown, from cutting away so much of them as projects into or over his land, and the owner of the tree is not entitled to notice unless his land is entered in order to effect such cutting. However old the roots or branches may be, they may be cut without notice subject to the same condition. The right of the owner or occupier of land to free it from such obstructions is not restricted by the necessity of giving notice, so long as he confines himself and his operations to his own land, including the space vertically above and below the surface" (*b*).

Eaves of House projecting over Neighbour's Land.

If a man build his house so near to his neighbour's that the eaves of the roof project over the land of his neighbour, the latter need not wait till any water actually fall from them, but may pull them down at once (*c*). It is advisable, however, to give notice to the proprietor requesting him to remove them before taking any steps to pull them down.

If the house has been built for 20 years and a right acquired to discharge the water from the eaves upon the neighbouring land, the adjoining proprietor cannot pull them down.

Gleaners and Gleaning.

In some parts of the country the public have an idea that they have a *right* to enter the stubble fields, and to glean and carry away the scattered ears of corn when the field is "cleared." The notion is, however, erroneous: gleaners can only enter the fields of others by the favour and consent of the occupier. It was decided many years ago, after two solemn arguments, that no such right exists at common law (*d*).

(*a*) Gale on Easements (5th ed.), 524.

(*b*) *Per* Lindley, L.J., *Lemmon* v. *Webb*, 63 L. J. Ch. (1894), 570; affirmed by House of Lords, H. L. E. (1895), A. C. 1.

(*c*) 2 Roll, Abr., 145; *Fay* v. *Prentice*, 1 C. & B., 828.

(*d*) *Steel* v. *Houghton*, and *Worlledge* v. *Manning*, 1 H. Black., 51, 53.

SECTION IV.—REAL PROPERTY.

Heirs to Real Estate.

An *heir-at-law* is he who, after the death of an absolute owner, has a right to inherit all his lands, tenements, and hereditaments. An heir-at-law can only be disinherited by express devise or necessary implication, and that implication must appear to be such a strong probability that an intention to the contrary cannot be supposed.

For instance, a devise *to the testator's heir*, after the death of A, will confer on A an estate for life by implication: but under a devise to B, a *stranger*, after the death of A, no estate will arise to A by implication (*a*).

An *heir apparent* is he whose right of inheritance is indefeasible, provided he outlives the ancestor: as the eldest son who must, by course of common law, be heir to the father, whenever the latter happens to die.

An *heir presumptive* is he who, if the ancestor should die immediately, would, in the present circumstances of things, be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born: as a brother or nephew, whose presumptive succession may be destroyed by the birth of a son or daughter; or a daughter, whose present hopes may be hereafter cut off by the birth of a son.

Descent of Real Estate of Intestates.

Under the law of inheritance, as settled by 3 & 4 Wm. IV. c. 106, and the amending Act 22 & 23 Vict. c. 35, §§ 19, 20, the following are the rules or canons as to the descent of real estate:—

1. In every case the descent shall be traced from the *purchaser* (the term "purchaser" here implies every person who takes otherwise than by descent).

2. Inheritances shall, in the first place, lineally descend to the issue of the purchaser, *in infinitum*.

3. The children of the purchaser are preferred to their own issue; and among such children, males to females, and an elder male to a younger; but females (where there are several) take together.

4. In case of the death of any of the children before the decease of the purchaser, then the issue of the deceased children of the purchaser *represent* or take the place of their parents *in infinitum*: the children of the same parent being always sub-

(*a*) Jarm. on Wills, c. 17, § 2.

ject (among each other) to the same law of inheritance as contained in the third rule.

5. On failure of the issue of the purchaser, the inheritance shall descend to the nearest lineal ancestor then living, in the preferable line; supposing no issue of a nearer deceased ancestor in that line to exist.

6. Among the lineal ancestors of the purchaser, the paternal line (whether of the purchaser, or of any ancestor male or female) is always preferred to the maternal.

7. When an ancestor (to whom, if living at the purchaser's death, the inheritance would, according to the 5th rule, have descended) dies before the purchaser, leaving issue; the issue of such ancestor *in infinitum* shall represent him according to the same law of succession as before laid down with respect to the issue of the purchaser; but with this addition, that those related by the whole blood to the purchaser are preferred to those related by half blood.

Establishment of a Real Representative.

By the Land Transfer Act, 1897 (60 & 61 Vict. c. 65, § 1), it is enacted that where real estate (not including copyholds or customary freeholds) is vested in any person without a right in any other person to take by survivorship, such real estate shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time as if it were a chattel real vesting in them or him; and this provision is to apply also to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him. Further, probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

Estate Tail (or Entailed Estate).

An estate tail is an estate given to a man and the heirs of his body. Such an estate will, if not barred, descend, on the decease of the first owner, to all his lawful issue—children, grand-children, and more remote descendants, so long as his posterity endures, in a regular order and course of descent from one to another; and, on the other hand, if the first owner should die without issue, his estate, if he has not barred the entail, will then determine.

Estates tail may be in tail male, or in tail female; an estate in tail male cannot descend to any but males; and an estate in tail female can only descend to females.

An estate tail (provided the entail be not barred) reverts to the donor or reversioner, if the donee die without leaving descendants answering to the condition annexed to the estate upon its creation : unless there be a limitation over to a third person on default of such descendants, when it vests in such third person or remainder-man (*a*).

A tenant in tail *in possession* may, by deed, bar the entail and change the estate into an estate in fee simple ; if *in remainder*, he needs to obtain the consent of the "protector" of the settlement, which consent may be given either by the same deed by which the entail is barred, or by a separate deed. In ordinary cases, the protector is the first tenant for life under the settlement by which the estate tail was created, and he is at liberty either to give or to withhold his consent to the tail being barred. If he should refuse to consent, the tenant in tail may still bar his own issue ; but he cannot bar estates in remainder or reversion. The consequence of such a limited bar is that the tenant in tail acquires a disposable estate in the land for so long as there shall be any of his issue or descendants living, but no longer ; that is, so long as the estate tail would have lasted had no bar been placed on it. This is called a "base fee." But when his issue fail, the persons having estates in remainder or reversion become entitled (*b*).

Restriction on Executory Limitations.

Where (under an instrument coming into operation after 31st December, 1882) there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue ; that executory limitation shall become void as soon as there is living any issue who has attained the age of 21, of the class on default or failure whereof the limitation over was to take effect (45 & 46 Vict. c. 39, § 10).

Powers of Tenant for Life under Settled Land Acts.

By the Settled Land Act, 1882 (*c*), a tenant for life may sell the settled land or any part thereof, or any easement, right, or privilege in relation thereto ; and where the settlement com-

(*a*) Jarm., Wills, cc. 28, 35.
(*b*) Williams on Real Property (17th ed.), 98.
(*c*) 45 & 46 Vict. c. 38, amended by 47 & 48 Vict. c. 18, and 50 & 51 Vict. c. 30, and supplemented by 52 & 53 Vict. c. 36 and 53 & 54 Vict. c. 69.

prises a manor, may sell the signory of any freehold land within the manor, or the freehold and inheritance of any copyhold or customary land parcel of the manor: and may exchange the settled land for other land: and where the land is held in undivided shares may concur in making partition of the entirety (§ 3).

Every sale shall be made at the best price that can reasonably be obtained: and every exchange for the best consideration in land, or in land and money. But settled land in England shall not be given in exchange for land out of England (§ 4).

Where on a sale, exchange, or partition, there is an incumbrance, the tenant for life, with the consent of the incumbrancer, may charge the incumbrance on any other part of the settled land, in exoneration of the part sold or exchanged, and by conveyance of the fee simple or other estate or interest the subject of the settlement, or otherwise, may make provision accordingly (§ 5).

A tenant for life is also empowered to lease the settled land for any term not exceeding—(1) in the case of a building lease, 99 years; (2) in the case of a mining lease, 60 years; (3) in the case of any other lease, 21 years (§ 6).

Settled Land Act, 1890.

By this latest of the amending Acts relating to Settled Land, amongst other things it is provided, as to leases, that a lease for a term not exceeding twenty-one years at the best rent that can be reasonably obtained without fine, and whereby the lessee is not exempted from punishment for waste, may be made by a tenant for life, (i) without any notice of an intention to make the same having been given under § 45 of the Act of 1882; and (ii) notwithstanding that there are no trustees of the settlement for the purposes of the Settled Land Acts; and (iii) by any writing under hand only containing an agreement instead of a covenant by the lessee for payment of rent, where the term does not extend beyond three years from the date of the writing (53 & 54 Vict. c. 69, § 7).

In a mining lease, (i) the rent may be made to vary according to the price of the minerals or substances gotten, or any of them; and (ii) such price may be the saleable value, or the price or value appearing in any trade or market or other price list or return from time to time, or may be the marketable value as ascertained in any manner prescribed by the lease (including a reference to arbitration), or may be an average of any such prices or values during a specified period (§ 8).

And as to mansion houses and demesnes, it is provided by

the same Act (in substitution for § 15 of the Act of 1882) that the principal mansion house (if any) on any settled land, and the pleasure ground and park and lands (if any) usually occupied therewith, shall not be sold, exchanged, or leased by the tenant for life without the consent of the trustees of the settlement or an order of the Court. But when a house is usually occupied as a farmhouse, or where the site of any house and the pleasure ground and park and lands (if any) usually occupied therewith do not together exceed twenty-five acres in extent, the house is not to be deemed a principal mansion house within the meaning of this section (§ 10).

Timber on Leasehold, Lifehold, and Entailed Estates.

When lands are let to a tenant for his life, or for years, if no exception is made of the timber, it will still remain the property of the landlord or owner of the inheritance, subject to the tenant's right to the loppings, &c. (*a*).

Timber blown down belongs to the owner of the first estate of inheritance.

If the tenant be a tenant for life *without impeachment of waste*, timber cut down by him in a husbandlike manner will become his own property, when actually severed (*b*).

A tenant for life, unimpeachable for waste, is entitled to the proceeds of sale of ornamental timber, properly cut, for the purpose of preserving adjacent timber; even though cut by himself, without obtaining the sanction of the Court. But if before the cutting takes place the remainder-man applies for an Injunction to restrain the tenant for life from cutting the timber, the Court will grant such Injunction, and direct the cutting to be done under its own supervision. The tenant for life, however, would nevertheless be entitled to the proceeds of the sale of the timber (*c*). But where ornamental timber has been wrongfully cut, the tenant for life is not entitled to any interest in the proceeds: but the same belong to the tenant in tail (*d*).

A tenant for life *impeachable for waste* formerly had no right to cut timber, even if it be decaying or overcrowding, unless he obtained the sanction of the Court. If without that sanction he cut down and sold any of the timber, he did so at his

(*a*) Co., Litt., 41; 2 Black., Comm., 35, 122.
(*b*) 2 Black., Comm., 283; Co., Litt., 218.
(*c*) *Barker* v. *Scbright*, 49 L. J. Ch. D., 65; *Micklethwait* v. *Micklethwait*, 1 De G. & J., 524. (*d*) *Lushington* v. *Boldero*, 6 Madd., 149.

peril, and was not permitted to derive any advantage from his own wrongful act (*a*).

And where a father, who was tenant for life, with remainder to his son in fee, cut ripe timber in the years 1831, 1842, and subsequent years, and appropriated the proceeds to his own use, and died in 1864 (his son having died in 1844 intestate), the heir-at-law of the son, in 1866, filed a bill in Chancery against the personal representative of the tenant for life for an account of the timber cut: and it was held that as to the timber cut in 1831, the claim was barred by the Statute of Limitations; but as to that cut subsequently, the money produced by sale thereof must be accounted for to the heir-at-law with interest (*b*).

By the Settled Land Act, where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and fit for cutting, the tenant for life, on obtaining the consent of the trustees of the settlement, or an Order of the Court, may cut and sell that timber or any part thereof. But three-fourths of the proceeds of the sale must be set aside as capital money arising under that Act, and the other fourth part will go as rents and profits.

A tenant *in tail* may cut down timber, and dispose of it, and commit waste on the estate, and this although he may not have barred the entail; but if he sells the growing trees, the buyer must sever them during the vendor's life, otherwise the issue in tail will be entitled to them as part of the inheritance; and the buyer, though obliged to pay the purchase-money, will not then be allowed to sever them.

Tenant in Fee Simple.

A tenant in fee simple (or tenant in fee) is one who has lands or tenements "to hold to him and his heirs for ever" (*c*).

A "fee simple" is the largest estate any one can have in real property in this country. A man is said to have the *fee simple* of the estate when he is *de facto* absolute owner.

By the Wills Act, where any real estate is devised to any person without any words of limitation, such devise passes the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will. (7 Wm. IV. & 1 Vict. c. 26, § 28.)

(*a*) *Perrot* v. *Perrot*, 3 Atk., 9; *Honywood* v. *Honywood*, 43 L. J. Ch., 652.

(*b*) *Seagram* v. *Knight*, 36 L. J. Ch., 918.

(*c*) 2 Black., Comm., 104.

Joint Tenants and Tenants in Common.

Survivorship is incidental to a joint tenancy, but not to a tenancy in common. A simple devise to two or more persons makes the devisees joint tenants: but where the objects of the devise are husband and wife (who are regarded in law as one person), they take not as joint tenants but by *entireties;* the consequence of which is, that neither can by his or her own separate conveyance affect the estate of the other (*a*): and the same rules have been held applicable to personalty (*b*). Since the Married Women's Property Act, 1882 (see *post*, p. 449), it has been doubted whether the rule as to husbands and wives is not changed.

A limitation to two persons and the survivor of them, and the heirs of such survivor, does not create a joint tenancy; it gives a contingent remainder to the survivor (*c*).

Tenants in common are each in the position of *owner* of a separate estate. There being no entirety of interest among tenants in common, each is seised of a distinct though undivided share (*d*).

Joint tenants have one estate in the whole; they may sever the tenancy, for each joint tenant has absolute power to dispose of his share by deed, *in his lifetime*, by selling or mortgaging to a stranger or otherwise, *but not by will.* If he dies without having made such disposition during his life, his share goes to the other joint tenant (*e*).

Courts of equity lean strongly against joint tenancy, on account of its being attended with the inseparable incident of the right of survivorship, and in construing deeds or wills will readily give effect to any expression which will admit the construction of a tenancy in common.

Joint Ownership: Right of Survivorship.

The important right of survivorship belongs to a joint ownership of personal property, as well as real. Whether it be a lease, a horse, a chose in action, debt, or legacy, the surviving joint owner will be entitled to the whole, unaffected by any disposition by the will of the deceased joint owner (*f*).

It follows, as a consequence of the survivorship which is incidental to a joint tenancy, that if the devise fail as to one of the devisees, from its being originally void, or subsequently revoked, or by reason of the decease of the devisee in the tes-

(*a*) *Doe* d. *Freestone* v. *Parratt*, 5 T. R., 652.
(*b*) *Atcheson* v. *Atcheson*, 11 Beav., 485; *Moffatt* v. *Burnie*, 18 Beav., 211.
(*c*) *Vick* v. *Edwards*, 3 P. Wms., 372. (*d*) 2 Black. Comm. 194.
(*e*) Litt., § 287. (*f*) Same, §§ 281, 282.

tator's lifetime, the other or others will take the whole. But the rule is different as to tenants in common, whose shares, in case of the failure or revocation of the devise to any of them, descend to the heir-at-law, or residuary devisee or legatee of the testator; unless the devise be to the objects as a class, in which case the individuals composing the class at the death of the testator are entitled among them, whatever be their number, to the entirety of the subject of the gift (*a*).

The New Practice as to Conveyancing.

In 1881 and 1882 important Acts—namely, 44 & 45 Vict. c. 41, and the amending Act, 45 & 46 Vict. c. 39—were passed (under the auspices of Earl Cairns) to simplify and improve the practice of conveyancing, and to vest in trustees, mortgagees, and others, various powers commonly inserted in settlements, mortgages, wills, etc.

The effect of the Statutes has been to reduce very considerably the length of all deeds and documents relating to conveyancing, and the mortgage, transfer, settlement, and other dealings with real, leasehold, and other property, but it has introduced certain artificial terms the meaning of which is not obvious to non-professional persons.

On contracts for sale, certain stated conditions of sale set forth in the Act are to apply to all titles, sales, and purchases, unless a contrary intention is expressed in the contract of sale. (44 & 45 Vict. c. 41, § 3.)

The Court is empowered, on the application of any party to a sale, to direct or allow payment into Court, or other arrangement whereby the property may be sold free from incumbrances (§ 5).

Certain "general words" in conveyances, previously considered necessary, but which tended to increase the length of conveyances, are now deemed to be included in conveyances under the Act, and may therefore be omitted (§ 6).

All the usual covenants for title are to be deemed to be included in a conveyance for value by the beneficial owner. But the conveyance must actually state that the person conveying does so as beneficial owner (§ 7).

Similar provisions are also contained with regard to conveyances of leaseholds, and to settlements and to conveyances by trustees and mortgagees, but the latter must state that they convey as such; otherwise the usual covenant against incumbrances will not be implied (§ 7).

(*a*) Jarm., Wills, c. 33, § 2.

The Act permits the use of a short form of words conferring a right to the production of title deeds on persons entitled to require their production, and for the safe custody of such title deeds (§ 9).

The Act also contains provisions for the simplification of leases (§§ 10, 11, 12, and 13); and for restrictions on and relief against forfeitures of leases on breaches of certain covenants (§ 14). But forfeiture is not protected by the Act in case of the breach of specific covenants, such as a covenant not to assign, or not to carry on a particular trade upon the premises.

And in the case of a covenant not to underlet without the consent of the lessor, where the lessee had underlet without obtaining such consent, simply through the oversight of the solicitor who acted for him, and the lessor claimed to re-enter, it was held that the forgetfulness of the lessee's agent was not a "mistake" in respect of which the Court could grant relief against forfeiture for breach of covenant (*a*).

It has also been decided that no relief can be given under section 14 of the Act of 1881 unless the relief is sought before the lessor has enforced his right of re-entry (*b*).

[As to mortgages under the Act of 1881, see *post*, p. 435.]

Conveyancing and Law of Property Act, 1892.

This enactment (55 & 56 Vict. c. 13) further amends the Conveyancing Act, 1881, and is to be read together with the Acts of 1881 and 1882. (As to the provision made by it as to forfeiture of leases on bankruptcy or execution, see *ante*, p. 237.)

The Act provides that in all leases containing an agreement against assigning or underletting without licence, such agreement shall, unless the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso that no fine shall be payable for such licence, but so as not to preclude the right to require payment of reasonable expenses incurred in relation to such licence (§ 3).

Also where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under a lease, the Court, on the application of an under-lessee, may make an order vesting the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property, upon such conditions, as to payment of rent, costs, compensation, or otherwise, as the Court shall

(*a*) *Barrow* v. *Isaacs*, C. A. (1891) 1 Q. B., 417.
(*b*) *Rogers* v. *Rice* (1892) 8 *Times* L. R., 511.

think fit; but in no case shall any under-lessee be entitled to a longer term than under his original sub-lease (§ 4) (*a*).

Sales and Leases on behalf of Infant Owner.

Where a person in his own right, entitled to land in fee simple, or for any leasehold interest at a rent, is an infant, the land is to be deemed a settled estate, within the Settled Estates Act, 1877 (40 & 41 Vict. c. 18).

The Conveyancing Act, 1881 (see *ante*, p. 430), also provides for the management of the land, and receipt and application of the income during minority (44 & 45 Vict. c. 41, §§ 41, 42).

Conveyances under the Act of 1881.

Freehold land or other property may be conveyed by a person to himself jointly with another person, so also by a husband to his wife, and by a wife to her husband alone or jointly with another person (§ 50).

Every conveyance shall, by virtue of this Act, be effectual to pass all the estate, right, title, &c., which the conveying parties respectively have in or to the property conveyed, unless a contrary intention is expressed in the deed (§ 63).

Recovery of Possession of Land.

The Action by which the possession of houses and land was recovered was formerly known as "Ejectment," but under the Judicature Acts it is now termed an "Action for the recovery of possession of land." [As to property not exceeding £50 in rent or value per annum, see under "County Courts," p. 24, and p. 433.]

Under the Real Property Limitation Act, 1874 (37 and 38 Vict. c. 57), the possession of a house, land, or other real property for 12 years, without acknowledgment of title in any person, gives the possessor an absolute title to the property against all claimants, and an Action to turn such possessor out of the property cannot be sustained. Prior to the passing of that Act, the limitation was 20 years (3 & 4 Wm. IV. c. 27, § 24). The time is susceptible of certain extensions if the real owner is under disability. Non-payment of rent does not come within this rule, so long as the lease lasts.

In all cases where an Action to recover possession of land is brought against a person in possession, such person must appear and defend his title; otherwise, notwithstanding his 12

(*a*) This section (it will be seen) reverses the decision in *Burt* v. *Gray* (1891, 2 Q. B. 98), where it was held that the Court could not relieve an under-lessee of part of demised premises from forfeiture for breach of a covenant to repair comprised in the head lease.

years' possession, or other good title, the claimant will recover a verdict against him, and he will lose his land.

He who brings the Action must support it upon the evidence of his own title. He will not, in any case, be permitted to rely upon the weakness of his adversary's title (*a*).

Where a person who had a claim of right to a house and premises obtained possession in a fraudulent manner, it was held that she could not defend an Action of ejectment, however good her title, but must give up possession before contesting the title. In this case the Defendant had asked leave to get some vegetables out of the garden; and, having thereby obtained the keys, took possession of the premises, and set up a claim of title (*b*).

Forfeiture of Lease.

Where a tenant has forfeited his lease or term by non-payment of rent, the landlord may bring an Action to recover possession, but a formal demand of the rent must first be made precisely on the last day on which it can be paid to save the forfeiture: as where the lease provides that if the rent be "unpaid for the space of 20 days, the lessor may re-enter," the demand must be made on the 20th day at some convenient time before sunset: a demand at 1 o'clock in the day will not do: and the demand must be of the *precise* sum due, and not a penny more or less (*c*).

The law requires great strictness in these formalities, as it is not favourable to forfeitures. If the rent be not paid when thus demanded, the tenant-at-law loses his term, and the landlord may bring his Action (*d*), subject however to rights of reinstatement under the Conveyancing Act, on certain terms.

In cases where half a year's rent is in arrear, and there is *no sufficient distress* on the premises, a formal demand of the rent is not necessary before bringing the Action (15 & 16 Vict. c. 76, § 210), although the lease should expressly state that demand shall first be made (*e*). Notice under the Conveyancing Act must be given before an Action is brought.

Recovery of Small Tenements at Petty Sessions and in the County Court.

Landlords of small occupations may recover possession, when the tenant refuses to quit at the expiration of his

(*a*) *Martin* v. *Strachan*, 5 T. R., 107, 110.
(*b*) *Doe* d. *Johnson* v. *Baytup*, 3 A. & E., 188.
(*c*) *Fabian* v. *Winston*, Cro. Eliz., 209; 1 Leon., 305.
(*d*) *Doe* d. *Foster* v. *Windlass*, 7 T. R., 117.
(*e*) *Doe* v. *Wilson*, 5 B. & Ald., 363.

tenancy, by proceeding in a summary manner before Justices at petty sessions, where the rent does not exceed £20 per annum; and this whether the occupation be land, house, or other premises, and whether held on lease (if not exceeding 7 years), or agreement, or otherwise. (1 & 2 Vict. c. 74.)

As to proceedings in the County Court in respect of premises held at a rent not exceeding £50 by the year, see *ante*, p. 30.

Enfranchisement of Copyholds.

This procedure (whereby, in effect, lands held on copyhold tenure are rendered freehold) is now regulated by the Copyhold Act, 1894 (57 & 58 Vict. c. 46), by which Act the law on the subject was consolidated. Although the enfranchised lands become freehold, there is a saving of all rights of common and the like.

Either the copyhold tenant or the lord of the manor may compel the enfranchisement of any copyhold or customary freehold lands and premises, and the freeing of the same from any heriot, quit-rent, or other manorial incident. A fair and proper compensation has to be paid, or made chargeable by way of mortgage or annuity upon the property, the amount of compensation being determined, if need be, by the Board of Agriculture.

Holding of Property by Aliens.

Real and personal property of every description may be acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to real and personal property of every description may be derived through or in succession to an alien, as in the case of a natural-born British subject. (33 Vict. c. 14, § 2.)

But no right is conferred on an alien to hold real property out of the United Kingdom, nor to qualify an alien for any office, or for any municipal, parliamentary, or other franchise: nor is an alien entitled to any right or privilege as a British subject, except such rights and privileges in respect of property as are by the Act expressly given to him; and the Act does not affect any estate or interest in real or personal property to which any person has or may become entitled in pursuance of any disposition made before the passing thereof. (33 Vict. c. 4, § 2.)

SECTION V.—MORTGAGES.

Mortgages under the Conveyancing Act of 1881.

Where a mortgagor is entitled to redeem, the Act imposes an obligation on the mortgagee, instead of reconveying, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor may direct. (44 & 45 Vict. c. 41, § 15.)

Powers of leasing are also given by the Act to a mortgagor of the land whilst remaining in possession, and to a mortgagee when in possession, as against the mortgagor and all prior incumbrancers.

The following powers are also conferred on a mortgagee where the mortgage is by deed:—Power of sale, and to appoint a receiver of rents, &c., when the mortgage-money has become due; power to insure at any time after the date of the mortgage; and power, whilst the mortgagee is in possession, to cut and sell timber (§ 19).

But the power of sale is not to be exercised unless (i) notice requiring payment of the mortgage-money has been given, and default made in payment for 3 months after: (ii) some interest under the mortgage is in arrear and unpaid for 2 months after becoming due: or (iii) there has been a breach of some provision contained in the mortgage deed or in the Act, other than a covenant for payment of the mortgage-money.

Any person entitled to redeem may have a judgment or order for sale instead of for redemption.

In an Action, whether for foreclosure or for redemption, or for sale, or for the raising and payment in any manner of mortgage-money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage-money or in the right of redemption, may, if he thinks fit, without giving time for redemption, direct a sale of the mortgage property on such terms as he thinks fit (§ 25).

A mortgage of freehold or leasehold, made in the form prescribed by the Act, will be deemed to have included in it covenants and provisoes for repayment (§ 26).

Tacking Incumbrances.

If a *third* mortgagee, having advanced his money without notice of a second mortgage, afterwards buy in a first mortgage, though it be pending a suit brought by the second mortgagee to redeem the first, yet the third mortgagee having

obtained the first mortgage, gains priority for his whole advance, over the second mortgagee (*a*).

Notice of his advance, given by the second to the first mortgagee, will not prevent the third mortgagee, who lent his money without notice of it, from tacking his mortgage to the first (*a*).

A person having the legal estate as a mortgagee, and advancing more money without notice of a second mortgage duly registered, can hold against the second mortgagee until he is paid all the money (*a*).

Registry is not notice; therefore a purchaser without notice obtaining the legal estate, will not be prejudiced by a prior equitable incumbrance registered previously to his purchase (*a*).

After the decree of the Court to settle priorities, mortgagees cannot tack; but up to the time of the decree they may struggle for the *tabula in naufragio* ("plank in the shipwreck") (*b*).

In all these cases no subsequent incumbrancer will be allowed to tack unless when he lent his money he had no notice of the second mortgage, statute, or judgment: for being without notice is his *sole* equity (*c*).

And see the mortgage consolidation section of the Act of 1881 (44 & 45 Vict. c. 41, § 17).

Joint Mortgage.

Where money is advanced by persons, either in equal or unequal shares, who take a mortgage to themselves jointly; although the debt and security will at law belong to the survivor, in equity there will be a tenancy in common, the survivor being a trustee for the personal representatives of the deceased mortgagees (*d*).

Purchasing an Estate upon which there is a Mortgage.

When a man buys an estate subject to a mortgage, and has no connection or contract with the mortgagee, he does not thereby take the debt upon himself personally: and if it should be found, afterwards, that the property is insufficient to pay the mortgage debt, the estate only is liable, and not the individual personally; though he may have covenanted with the vendor to pay the mortgage debt in full; but it remains a

(*a*) *Marsh* v. *Lee*, 1 White & T., L. C. Eq. (5th ed.), 659.
(*b*) *Ex parte Knott*, 11 Ves., 619.
(*c*) *Brace* v. *Duchess Marlbro'*, 2 P. Wms., 495.
(*d*) *Lake* v. *Gibson*, 1 White & T., L. C. Eq. (6th ed.), 215.

charge upon the estate only (*a*). If he has covenanted with the vendor to pay, the vendor can recover from him in case he is sued by the mortgagee. But where there is a new proviso for redemption on payment, the purchaser of the equity of redemption, having entered into a covenant for payment with the mortgagee, will be considered to have adopted the debt (*b*)

Restrictions on the redemption of a mortgage are discountenanced in equity. It is a maxim in equity that "an estate cannot at one time be a mortgage, and at another time cease to be so, by the same deed" (*c*).

The executor, not the heir, of a mortgagee in fee is entitled to the money secured on the mortgage (*d*). And he can also reconvey the fee-simple without the intervention of the heir (44 & 45 Vict. c. 41, § 30).

No one should buy a mortgaged property without communicating with the mortgagee.

Foreclosure of Mortgage.

A mortgagee, or any person claiming under him, can compel the mortgagor, after breach of the condition (that is, non-payment of principal and interest at the time stated), to elect either to redeem the pledge, or that his equity of redemption be extinguished (*e*). This is done by foreclosure, which may be obtained by Action or by Summons in the High Court. And a sale may be directed by the Court, instead of a foreclosure. (15 & 16 Vict. c. 86, § 48.) [See also Conveyancing Act, 1881, *ante*, p. 435.]

A foreclosure Action must be brought within 12 years after the right to bring it first accrued, or within 12 years after the last payment of any part of the principal money or interest. (7 Wm. IV. & 1 Vict. c. 28; 37 & 38 Vict. c. 57.)

Thus if a person in possession of real estate mortgage it to another, and the mortgagee suffer the mortgagor to remain in possession of the estate without payment of interest for 12 years, and such mortgagee take no steps to recover and receive the rents during that period, and there be no acknowledgment in writing under the hand of the mortgagor, the mortgagee will, in general, lose all claim to the estate. He will also (it

(*a*) *Woods* v. *Huntingford*, 3 Ves., 132; *Tweddell* v. *Tweddell*, 2 Bro., C. C., 101, 152.
(*b*) *Earl of Oxford* v. *Lady Rodney*, 14 Ves., 417.
(*c*) *Howard* v. *Harris*, 2 White & T., L. C. Eq. (6th ed.), 1178.
(*d*) *Thornbrough* v. *Baker*, 2 White & T., L. C. Eq. (6th ed.), 1166.
(*e*) Coote on Mortgage, Bk. 5, c. 4.

has been held) lose his remedy under the covenant by the mortgagor to repay the amount advanced (*a*).

Right to Redeem the Mortgage.

Every person having a legal or equitable interest in or lien on the land or houses, may insist on redeeming the mortgage. A first mortgagee is bound to accept payment of principal, interest, and costs *when tendered by a second mortgagee;* and must convey to him the estate, whether such tender be made with consent of the *mortgagor or not* (*b*). If a mortgagor pays off a first mortgagee and gets a reconveyance to himself, he will hold the estate as trustee for a second mortgagee.

A Mortgage cannot be made Irredeemable.

No agreement in a mortgage can make it irredeemable, either after the death of the mortgagor or upon failure of issue male of his body (*c*), but a mortgage may be made for a time certain.

Mortgagor and Mortgagee, their Rights as to the Rents of the Mortgaged Premises.

Where a tenant occupies mortgaged premises, and his occupation is by lease granted *prior* to the mortgage, the mortgage operates as a grant of the reversion, and carries with it a *right to the rent*, and the benefit of the landlord's remedies for the recovery; the mortgagee, therefore, in the event of non-payment of the interest upon his loan, may enforce payment of the rent from the lessee, either by distress or Action; and the lessee will be exonerated by such payment from any demand for rent on the part of the mortgagor (*d*). And so also where the letting is from year to year (*e*).

Where, however, the tenant's occupation commences *subsequently* to the mortgage, although the mortgagee may evict the tenant he cannot distrain or bring any Action for the rent, unless the tenant has, with the consent of the mortgagor, agreed to pay the rent to the mortgagee (*f*). But if the mortgagee has given notice to the tenant requiring him to pay the rent to him as such mortgagee, the tenant should either obtain the sanction of the mortgagor to such payment, or take an indemnity from the mortgagee.

(*a*) *Sutton* v. *Sutton*, 22 L. R., Ch. D., 511.
(*b*) 2 Spence, Eq. Jur., 652, 653.
(*c*) *Howard* v. *Harris*, 2 White & T., L. C. Eq. (6th ed.), 1178.
(*d*) *Moss* v. *Gallimore*, 1 Doug., 279.
(*e*) *Burrows* v. *Gradin*, 1 D. & L., 213.
(*f*) *Pope* v. *Biggs*, 4 M. & R., 193.

If the mortgagor sues for rent after notice of the mortgage is given to the tenant, such tenant will have a defence to such demand under the Interpleader Act (1 & 2 Wm. IV. c. 58, § 1).

Mortgage of Leaseholds.

When a mortgage is by assignment of a leasehold interest, the mortgagee takes the interest subject to the covenants and obligations of the original lease. But if an under-lease, instead of an assignment, be taken, the mortgagee will be protected (*a*).

A mortgage of leasehold, whether legal or equitable, includes the goodwill of a trade followed on the premises, and the fixtures (*b*).

In case of a mortgage of leaseholds by assignment of the whole term, the mortgagee will be liable to the landlord during the continuance of the mortgage for payment of the rent and performance of the covenants; and against this liability the covenant of the mortgagor is his only security. To avoid this, mortgages of leaseholds are generally made by way of under-lease (*c*).

Mortgage of Advowsons.

The mortgagor of an advowson has a right to nominate to the living on a vacancy: and the mortgagee will be obliged to accept the nominee, even, it seems, though there was a *covenant* in the *mortgage* deed that the *mortgagee* should present on every avoidance (*d*).

Rate of Interest on Mortgages.

Five per cent. was formerly the highest rate of interest allowed on mortgages: but all the laws against usury have been repealed, and any rate of interest may be taken which the mortgagor is willing to pay. (17 & 18 Vict. c. 90.)

Equitable Mortgage by Deposit of Title Deeds.

A deposit of title deeds, with or without a written instrument, constitutes an equitable mortgage. And the delivery of deeds for the purpose of preparing legal mortgage also constitutes, in fact, an equitable mortgage (*e*).

"A proprietor of an estate goes to his banker, and says, 'Take these deeds into your possession, and obtain for me £10,000 on their security.' This is a mortgage by deposit of title deeds—an equitable mortgage—a most convenient mode

(*a*) *Holford* v. *Hatch*, 1 Doug., 183; 2 Sp., Eq. Jur., 614.
(*b*) 2 Sp., Eq. Jur., 637.
(*c*) Williams, Real Prop. (15th ed.), 514.
(*d*) *Jory* v. *Cox*, Prec. Ch., 71; *Amhurst* v. *Dawling*, 2 Vern., 401.
(*e*) *Russel* v. *Russel*, 1 White & T., L. C. Eq. (5th ed.), 726.

of raising money. Notoriety is dispensed with, and the accommodation afforded, with every security to the lender, and without the necessity for a mortgage deed" (*a*).

A vendor has an equitable mortgage on the estate for unpaid purchase-money, which equitable lien will prevail against the *heir*, and against a purchaser *with* notice of the lien, but not *without* (*b*).

Trustees of a bankrupt are bound by an equitable lien, although they had no notice of its existence (*b*).

An equitable mortgage will not avail against a purchaser (nor against a subsequent mortgagee, whose mortgage has been duly registered if the land is in a register county), without notice of the deposit of the title deeds.

An equitable assignee of a lease (by mere deposit) is not liable to the covenants of the lease; nor can he be compelled to take a legal assignment of it; although he may have entered upon the premises and paid the rent (*b*).

Costs where Mortgagee is a Solicitor.

By the Mortgagees Legal Costs Act, 1895 (58 & 59 Vict. c. 25), in the case of mortgages made after the commencement of the Act, any solicitor to whom, either alone or jointly with another person, a mortgage is made, or the firm of such solicitor, is entitled to receive for all business transacted and acts done in negotiating the loan, deducing and investigating title, and preparing and completing the mortgage, all such usual professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to a person not a solicitor, and such person had retained and employed such solicitor or firm to transact the business; and such charges may be recovered from the person on whose behalf the business is done, or charged against the security. The Act does not extend to Scotland.

Mortgages of Personalty.

A mortgage of personalty is a pledge or transfer of the property itself, with or without a right of retainer till the debt is paid. It may be held till a subsequent debt or advance is paid, as well as the original debt (except in case of bankruptcy). But it should be borne in mind that the provisions of the Bills of Sale Acts (see *ante*, p. 211) render mortgages of chattels a security of doubtful value.

[As to assignments of policies of life insurance as security for money lent, see *ante*, p. 261.]

(*a*) Lord Westbury, C., in the House of Lords, Feb. 18, 1862.
(*b*) *Russel* v. *Russel*, 1 White & T., L. C. Eq. (5th ed.), 726.

PART X.

MARRIAGE, HUSBAND AND WIFE, AND CHILDREN.

SECTION I.—MARRIAGE CONTRACTS.

MARRIAGE is considered in law as a contract, and with but few exceptions the ordinary principles which in law attach to contracts in general apply to the marriage contract.

One of those exceptions is, that the marriage contract may be legally entered into by persons under 21. The age for consent to matrimony is 14 in males, and 12 in females (*a*).

The consent of parents and guardians was formerly essential to the validity of all marriages of minors by licence. But the statutes requiring such consent have been repealed, and it is now enacted that, after the marriage has been actually solemnized, no evidence shall be given to prove non-consent in any suit touching the validity of such marriage (*b*).

Celebration of Marriage.

The following modes of celebrating a marriage are recognised by English law :—

(1) *After Banns, in Church.*—The banns must be published on three Sundays preceding the solemnization of the marriage ; and it should be remembered that the clergyman is entitled to require seven days' notice, in writing, of the banns. The parties must have been resident in the parish fifteen days, and if they

(*a*) Co. Litt., 79 (a) ; Roll. Abr., 341.
(*b*) 6 & 7 Wm. IV. c. 85, § 25 ; 4 Geo IV. c. 76, §§ 16, 25 ; *Rex* v. *Birmingham*, 8 B. & C. 29 ; 7 & 8 Vict. c. 56, § 3 ; 19 & 20 Vict. c. 119, § 17.

reside in different parishes, the banns must be published in each parish, the clergyman of one parish giving a certificate of publication to be handed to the clergyman who performs the ceremony. This must be within three months of publication of banns. The *necessary* fees amount to a few shillings.

(2) *With Registrar's Certificate, in Church.*—One of the parties must be a parishioner of the parish in the church of which the marriage is to be solemnized; and the parties must have resided seven days in the district of the superintendent registrar. If they reside in different districts, notice must be given to the superintendent registrar of each district. The notice will have to run twenty-one days before the certificate can be issued, and the marriage must then take place within three calendar months. Fees, 2*s.*, exclusive of church fees.

(3) *By Ordinary Licence, in Church.*—An ordinary licence is obtainable *on the personal application* of one of the parties —in London, at Doctor's Commons (Vicar-General of Canterbury's office, or Bishop of London's registry); or in country dioceses, at the Bishop's registry or through a surrogate. One of the parties must have resided for fifteen days immediately preceding the issuing of the licence in the parish in the church of which the marriage is to be solemnized. The licence usually costs from £2 to £3.

(4) *By Special Licence.*—A special licence is granted by the Archbishop of Canterbury, on application through a proctor, at the Faculty Office, Doctor's Commons, but only under special circumstances approved by the Archbishop, and enables the parties to be married at any time or place, without previous residence in the district. Usual cost, about £30.

(5) *With Registrar's Certificate (or Licence) in Nonconformist or Roman Catholic place of worship.*—For a *certificate* the same notices must be given, and the same time allowed, as in case (2) above. But for a *licence* one of the parties only (who must have resided fifteen days in the district) need give notice to the superintendent registrar, and the licence may be issued after the expiration of one whole day after entry of notice. The registrar's fees for a licence amount to £2 4s. 6d.

The attendance of the registrar at the church or chapel where the marriage is celebrated is necessary, unless dispensed with (in order that the marriage ceremony may be performed by the Minister of the church or chapel, or other "authorised person") under the Act of 1898 mentioned below. Registrar's fee, 5*s.*; or, on a marriage by licence, 10*s.*

By the Marriage Act, 1898 (61 & 62 Vict. c. 58), the presence of the registrar may be dispensed with, and the mar-

riage celebrated without him, in any building certified to the Registrar-General as a place of religious worship and registered for the solemnization of marriages, by the "authorised person" certified as having been duly authorised for the purpose by the trustees or other governing body of the building, or of some registered building in the same registration district. In the presence of such "authorised person" and witnesses, the contracting parties are to make declarations similar to those now required to be made before the registrar and witnesses. The registrar is still to be bound to attend if the parties require his attendance, and in case of such attendance is to be entitled to his fees.

The "authorised person" for a registered building is required by the Act, in the months of April, July, October, and January, to deliver to the superintendent registrar, on forms to be supplied by the Registrar-General, a certified copy of all the entries of marriages in the register-book, to be kept by him in accordance with rules made by the Registrar-General.

This new Act is not to come into operation until April 1st, 1899.

(6) *With Registrar's Certificate (or Licence) at the Registrar's Office.*—This is a civil marriage only, without any religious ceremony, and can be celebrated after procuring certificate or licence as explained in case (5). Registrar's fee for the marriage, 5*s.*, or, if by licence, 10*s.*

In all cases, except by special licence, the marriage must be celebrated between 8 a.m. and 3 p.m. (49 & 50 Vict. c. 14.)

(7) *Marriages of Members of the Society of Friends*, and (8) *of Jews*, are the subject of special regulations.

It has been judicially decided that at common law a marriage between British subjects, solemnised on board an English man-of-war at a foreign station by a clergyman of the Established Church, is valid, even though no banns be published, nor any licence or certificate be obtained (*a*). [As to marriage of British subjects abroad, see *ante*, p. 110.]

Void Marriages.—Prohibited Degrees.

All marriages celebrated after the 31st of August, 1835, between persons within the prohibited degrees of affinity (set out in the Book of Common Prayer), are absolutely void (5 & 6 Will. IV. c. 54).

If a widower, therefore, goes through a marriage ceremony with a sister of his deceased wife, or a widow with a brother

(*a*) *Culling* v. *Culling and Nicholson*, L.R. (1896) P., 116.

of her deceased husband, the ceremony is a mere form, and will not result in legal marriage between the parties in this country (*a*); and the issue of any such illegal union will be illegitimate, and can have no legal or equitable rights under a bequest to them by will simply as "children." [See further on this last point under "Bequests to Illegitimate Children," *post*, p. 498] (*a*).

Publication of Banns and Marriage in a False Name.

Where a man has concealed his true name at the time of the publication of the banns, or has purposely procured the banns to be published in false names, he will not be allowed to annul the marriage. Thus, where J. C., being about to marry S. S., procured the banns to be published in the names of J. C. and A. W., and the girl was married in the name of A. W., but she did not know until after the marriage had been solemnized and consummated that she had been married in a wrong name, the Court of Queen's Bench held that, notwithstanding the misnomer, she was the lawful wife of the said J. C. (*b*).

And where the banns had been published by the man without the knowledge of the intended wife, and (for the purpose of concealment) the Christian name of the wife was wrongly

(*a*) *Reg.* v. *Chadwick*, 11 Q. B. 173, 205; Addison on Contr. (8th ed.) 840. Since 31st August, 1835, until recently, no form of marriage with a deceased wife's sister was feasible in any part of the United Kingdom, but this state of things has been changed so far as regards the Island of Jersey, *and in the case of persons domiciled in the island*, by an Act of the States of Jersey adopted on 19th March, 1896, subject to the sanction of her Majesty, and since "approved" by an Order of her Majesty in Council on 1st August, 1896. Subjoined is an English version of the text of the "Acte des Etats de l'Ile de Jersey":—

"Art. 1. Every marriage contracted in this island, before the promulgation of the present law, between a man and the sister of his deceased wife, shall be deemed legitimate, and the children born of those marriages shall be capable of succession, provided (1) that the contracting parties were domiciled in the island at the time of the said marriage; (2) that the said marriage was legitimate in all other respects; (3) that all the formalities required by the laws in force have been observed; (4) that the said marriage has not been annulled by a competent tribunal.

"Art. 2. Every marriage contracted in Jersey, after the promulgation of the present law, between a man and the sister of his deceased wife, shall not on that account be void; and the children born of those marriages shall not for that reason be declared illegitimate and incapable of succession, provided that the contracting parties were domiciled in this island at the time of the said marriage."

(*b*) *Rex* v. *Wroxton*, 4 B. & Ad., 640; 1 N. & M., 712; *Rex* v. *Billingshurst*, 3 M. & S., 257; *Pougett* v. *Tomkyns*, *ib.*, 264 n.

stated, and the age and residence of both parties falsely described, it was held that the marriage was valid (*a*).

Fraudulent Celebration of Marriage.

A party cannot avail himself of his own fraud to annul an apparent marriage. If a man has imposed a pretended clergyman, and a supposititious licence, upon a young unmarried woman, the Court will not, at his instance, annul the apparent marriage (*b*). A mere misdescription or misnomer of the parties in the licence will not avoid the marriage. But if any fraud has been practised with the knowledge and connivance of both parties upon the ordinary—as "if a licence was obtained for one person with the intention that it should be used for another"—such a licence would not be valid (*c*).

If persons, professing to marry according to the rites of the Church of England, knowingly consent to the solemnization of such marriage by any person not being in holy orders, the marriage is null and void. (4 Geo. IV. c. 76, § 22.)

Bigamy.

A husband or wife, lawfully married, who marries again in the lifetime of the first wife or husband, is guilty of felony, punishable by penal servitude for not more than seven years or less than five, or by imprisonment for not more than two years, with or without hard labour. (24 & 25 Vict., c. 100, § 57.)

That enactment, however, is not to apply to any person whose husband or wife shall have been continuously absent for seven years from such person, and shall not have been known to such person to be living during that time, or to cases of a first marriage dissolved by divorce or judicially declared void.

If the second marriage takes place under a *bonâ fide* belief, founded on reasonable grounds, that the former consort is dead, such second marriage will be void, although it will not support an indictment for bigamy (*d*).

Marriages in Foreign Countries.

The law of the country where the marriage is solemnized does not always determine the validity of the marriage. If foreigners domiciled abroad come to England and get married in conformity with English law, the marriage will be a valid marriage here, though it may be null and void by the law of

(*a*) *Templeton* v. *Tyree*, 41 L. J. P. & M., 86.
(*b*) *Hawke* v. *Corrie*, 2 Hagg. Consist., 288.
(*c*) *Lane* v. *Goodwin*, 4 Q. B., 366.
(*d*) *R.* v. *Tolson* (1889), 16 Cox C.C., 629.

the country where they are domiciled (*a*). A marriage celebrated in France, on the other hand, may be valid in this country, although invalid according to French law (*b*).

Breach of Promise of Marriage.

If two persons, male and female, mutually agree to marry one another, such an agreement is termed a contract of betrothment: and if one of such persons, whether the man or the woman, break the promise, either by marrying somebody else, or by failing to fulfil his or her part of the contract within the time stipulated, or if no time stipulated, then within a reasonable time; such will be a breach of promise of marriage, for which an Action will lie, and compensation in damages may be obtained in proportion to the fortune or means and other circumstances of the party breaking the promise.

Where there are mutual promises to marry between two persons, one of the age of twenty-one, and the other under that age, the first is bound by the contract, so as to be liable to an Action if it be broken; but on the side of the minor it is voidable. Therefore an Action for breach of promise of marriage may be brought by an infant against an adult, but not by an adult against an infant. And so if a man of full age enter into a marriage contract with a lady who is a minor, the lady may sue the man upon the contract, although she (through being under age) will not herself be liable to an Action should she break her contract with the man (*c*).

In a case since the Infants' Relief Act, 1874 (37 & 38 Vict. c. 62), making void the ratification after full age of contracts made in infancy, it was held that an Action for breach of a promise of marriage made during infancy could not be sustained, notwithstanding ratification after full age: but on this point see *post*, p. 467.

It is not necessary that a promise of marriage be in express words, or in writing; it may be proved by the conduct of the parties, and by a definite understanding between them and their friends that a marriage is to take place.

Formerly neither the Plaintiff nor the Defendant could themselves give evidence in an Action for breach of promise of marriage. Now, both parties are competent witnesses; but no Plaintiff is to recover a verdict in such case unless his or her testimony as regards the promise be corroborated by some other material evidence. (32 & 33 Vict. c. 68, § 2.)

(*a*) *Simonin* v. *Mallac*, 29 L. J. P. & M., 97.
(*b*) *Este* v. *Smith*, 18 Beav., 121; Addison on Contr. (8th ed.), 851.
(*c*) *Holt* v. *Ward Clarencieux*, 2 Str., 938.

An Action for breach of promise of marriage may be brought against the personal representatives of a deceased promisor, provided special damage can be proved, and if the special damage be damage to property and not to person, flowing directly from the breach, or within the contemplation of the parties at the date of the promise (*a*).

Misrepresentations as to a Person about to be Married.

A promise of marriage is not binding if it be obtained, or the continuation of the engagement procured, by means of a false or fraudulent representation, or wilful concealment from the Defendant of the Plaintiff's former situation in life, and the circumstances of his or her family (*b*).

If false representations are made by a girl, or by her friends in collusion with her, as to her circumstances and situation in life, or as to the amount of her fortune or marriage portion, the fraud upon the man will be a complete answer to any Action that may be brought against him for a breach of promise (*c*). But if the girl herself was no party to the fraud or false representation, the man will be liable (*c*).

A Court of equity will compel persons making representations concerning the fortune of persons about to be married (knowing them to be false) to make good such representations: as in a case where a father represented that his daughter would have a fortune of £10,000 on the death of her parents, and a contract of marriage was entered into on the faith of the representation, the Court of Chancery decreed specific performance in favour of the husband, although the wife had died during her father's lifetime without issue (*d*).

Breach of Promise by a Person already Married.

If a person already married promise to marry another who knew not of the existing marriage, an Action may nevertheless be maintained against such married person for breach of promise of marriage (*e*).

Marriage Brokerage Contracts.

Contracts for reward, whereby a party engages to negotiate a marriage for another, are void as against public policy: and money paid under them may be recovered in a Court of equity, whether the marriage is an equal or an unequal one (*f*).

(*a*) *Finlay* v. *Chirney*, C. A., W. N. (1888), 45; 20 Q. B. D., 494.
(*b*) *Foulkes* v. *Sellway*, 3 Esp., 236.
(*c*) *Wharton* v. *Lewis*, 1 C. & P., 529.
(*d*) *Bold* v. *Hutchinson*, 24 L. J. Ch., 290.
(*e*) *Wild* v. *Harris*, 7 C. B., 1004.
(*f*) *Scott* v. *Tyler*, 2 White & T., L. C. Eq. (6th ed.), 120.

Where a person agrees for a sum of money to obtain for another a wife or a husband, or to assist a man in procuring a wife, or a woman a husband, such a contract as regards the money consideration is illegal, and cannot be enforced. And so, all contracts of the kind by (so called) "matrimonial institutions" are illegal; and money paid on such contracts may be recovered back again in a Court of equity (*a*).

And if a man bind himself by deed, covenant, or agreement to pay another a sum of money on condition that he will bring about a particular marriage, the instrument is void (*b*), whether the consideration for the deed appear therein or not.

And where a man, desirous of marrying a certain lady, gave her maid a bond for £1,000, and it afterwards appeared that the bond was given as a bribe to induce the maid to bring about a match between the obligor and her mistress (which she had succeeded in doing), the Court of Chancery ordered the bond to be given up and cancelled, as a transaction contrary to the public policy of the law (*c*).

Conditions in Restraint of Marriage.

Conditions annexed to legacies, devises, or contracts operating unduly in restraint of marriage, are void. And not only conditions *actually prohibiting*, but also such as lead to a *probable* prohibition of marriage, are void (*d*).

Where a legacy was given by a testator to his daughter, payable on her marriage or at the age of 21, upon condition that she should not marry a man unless he was entitled to an estate of £500 a-year; the condition was held void, and the lady was entitled to her legacy notwithstanding (*d*).

But conditions not to marry a particular person, or a native of any particular country, or a member of any particular religious sect, or a domestic servant, have been held good.

And a bequest by a husband to his wife of an annuity to be paid to her only so long as she continues his widow is a good bequest (*e*), and is a very usual arrangement.

A condition or gift over in restraint of the marriage of a widower is valid, upon the same principles as those which allow such a restraint upon the marriage of a widow (*f*).

(*a*) *Smith* v. *Bruning*, 2 Vern., 392.
(*b*) *Hall* v. *Potter*, 3 P. Wms., 76.
(*c*) *Cole* v. *Gilson*, 1 Ves., sen., 503; *Booth* v. *Earl of Warrington*, 4 Br. P. C., 163; *Keat* v. *Allen*, 2 Vern., 558.
(*d*) *Scott* v. *Tyler*, 2 White & T., L. C. Eq. (6th ed.), 120.
(*e*) *Jordan* v. *Holkham*, Amb., 209.
(*f*) *Allen* v. *Jackson*, 45 L. J. Ch., 310.

SECTION II.—HUSBAND AND WIFE IN RELATION TO PROPERTY.

Property of Married Women.

By the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), a married woman was made capable of acquiring and holding property as if she were a *femme sole*, without the intervention of any Trustee (§ 1). By the same Act the Married Women's Property Acts of 1870 and 1874 were both repealed; but such repeal was not to affect any act done or right acquired while those Acts were in force, nor any right or liability of any husband or wife married before 1st January, 1883 (§ 22).

Under the Act of 1882 every woman who marries after 1st January, 1883, is entitled to hold as her separate property, and to dispose of by will or otherwise, all real and personal property belonging to her at the time of marriage, or acquired by or devolving upon her after marriage, including wages, earnings, money, &c., acquired in any trade or employment which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill (§ 2).

Wedding presents given to a woman on her marriage are her separate property, and if her husband become bankrupt cannot be claimed by the trustee in bankruptcy (*a*).

In a case before the Court in 1892 it was held that the Act did not deprive the husband of his tenancy by the curtesy in the wife's undisposed-of real estate (*b*).

Any money or estate of the wife lent to her husband will be treated as assets of the husband's estate in case of his bankruptcy; and after all the claims of the other creditors have been satisfied the wife may claim a dividend (§ 3).

Women who were married prior to 1st January, 1883, are entitled to hold and dispose of, as their separate property, all real and personal estate, including wages, earnings, &c., the title to which accrues to them after that date (§ 5). And it has been held that a married woman, dying in the lifetime of her husband, can leave by will made before the Act of 1882 property acquired under the Act (*c*).

Moneys deposited or invested in any bank or society, or in any stocks, shares, etc., in the sole name of a married woman, are (unless the contrary be shown) to be deemed her separate property (§ 6). But if any such deposit or investment has been made by a married woman by means of moneys of her husband,

(*a*) Ex parte *Pannell*, In re *Jamieson*, 60 L. T. (N.S.), 159.
(*b*) Per Stirling, J. (1892), W. N., 74.
(*c*) In re *Bowen, James* v. *James*, per Chitty, J. (1892), W. N., 81.

without his consent, the Court may order the same to be transferred and paid to the husband (§ 10).

Legal Proceedings as between Husband and Wife.

Every woman now has in her own name against all persons, including her husband, the same remedies, civil and criminal, for the protection and security of her own separate property, as if such property belonged to her as a *femme sole.*

But no criminal proceeding can be taken by any wife against her husband while they are living together, as to any property claimed by her; nor while they are living apart, as to any act done by the husband while they were living together, concerning property claimed by the wife, unless such property has been wrongly taken by the husband when leaving or deserting, or about to leave or desert his wife (§ 12).

A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, is in like manner liable to criminal proceedings by her husband (§ 16).

Rights of Action by and against Married Women.

A married woman, by the Act of 1882, was made capable of entering into any contract to the extent of her separate property, and of suing and being sued as if she were a *femme sole.* Damages or costs recovered by her will be her separate property, and those recovered against her will be payable out of her separate property only. (45 & 46 Vict. c. 75, § 1.)

And by an Act of 1893, every contract hereafter entered into by a married woman, otherwise than as agent, (i) shall be deemed to be a contract entered into by her with respect to and to bind her separate property; (ii) shall bind all separate property which she may at that time or thereafter be possessed of or entitled to; and (iii) shall also be enforceable by process of law against all property which she may thereafter while discovert be possessed of or entitled to. Provided that nothing in this enactment is to render liable on any such contract separate property which at that time or thereafter she is restrained from anticipating. (56 & 57 Vict. c. 63, § 1.)

But costs in any action or proceeding instituted by a woman or by a next friend on her behalf may be ordered to be paid out of property subject to restraint on anticipation (§ 2).

Married Women Trading may be made Bankrupt.

Every married woman who carries on a trade separately

from her husband is now subject to the bankruptcy laws. (45 & 46 Vict. c. 75, § 1.)

But on a judgment being obtained against a married woman trading separately from her husband, the judgment being in the ordinary form against her separate estate, and that only, it was held that on this judgment a bankruptcy notice could not issue against her, as such notice requires the person served to pay the judgment debt (*a*).

Wife's ante-nuptial Liabilities and Restraints on Anticipation.

A woman, after her marriage, continues to be liable in respect and to the extent of her separate property for all debts incurred, contracts entered into, and wrongs committed by her before marriage; and she may be sued for any such; and the husband is not liable for the same, except to the extent of all property to which he shall have become entitled through his wife. (45 & 46 Vict. c. 75, §§ 13, 14.)

Nothing in the Act is to render inoperative any restriction against anticipation attached to the enjoyment by a married woman of any property or income under a settlement; but no restriction against anticipation in a settlement of a woman's own property to be made or entered into by herself is to have any validity against debts incurred by her before marriage, nor any greater force or validity against her creditors than a like settlement by a man would have against his creditors (§ 19).

Summary Proceedings in Questions of Property.

In any question between husband and wife as to the title to or possession of property, either party may apply to a Judge of the High Court, or to the County Court Judge of the district, who may, if either party so require, hear and determine the matter in his private room (§ 17).

Married Woman as Executrix or Trustee.

A married woman who is executrix or administratrix, alone or jointly with any other person, of the estate of any deceased person, or a trustee alone or jointly of property subject to any trust, may sue or be sued, and may join in any transfer of any money, stocks, funds, &c., without her husband, as if she were a *femme sole* (§ 18). And a husband is not to be liable for any breach of trust by his wife as such executrix, unless he has acted in or intermeddled with the trust (§ 24).

Liability of Wife to the Parish for Maintenance of Husband.

Where the husband of any woman having separate property

(*a*) In re *Hannah Lines*, ex parte *Lester*, C. A. (1893) 2 Q. B., 113.

becomes chargeable to the parish, the Justices may make such an order against the wife for the maintenance of her husband out of her separate property as they may make against a husband for the maintenance of his wife (§ 20).

Wife's Liability as to Maintenance of Children.

A married woman having separate property is to be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of his wife's children and grandchildren. But nothing in the Act is to relieve her husband from any liability for such maintenance imposed upon him by law (§ 21).

Wife's Paraphernalia.

A wife's *paraphernalia* consists of her wearing apparel and ornaments suitable to her rank and degree. A wife is entitled to these at her husband's death, over and above her dower (*a*).

The Married Women's Property Act, 1882 (see *ante*, p. 449), has not abolished the general law as to gifts or *paraphernalia*. Consequently, when a husband gives jewellery to his wife, whether the gift constitutes *paraphernalia* or separate estate is still a question to be determined, according to whether the evidence shows an intention on the part of the husband that his wife shall merely adorn her person with the jewels, or an intention that the same shall be hers absolutely (*b*).

Husband's Liability as to Debts incurred by Wife.

A husband who supplies his wife with necessaries suitable to her station in life is not liable for debts contracted by her without his previous authority or subsequent sanction (*c*).

A wife, though living with her husband, has no authority in law to pledge his credit; she cannot make a contract binding on him unless he gives her authority, as his agent, to do so; and the mere relationship does not entitle a tradesman to *assume* that the wife has such authority. But if the husband refuses or neglects to supply his wife with necessaries, or the means of obtaining them, she may pledge his credit for what is strictly necessary for her own support (*d*).

If a husband (though without making it public in any way) has forbidden his wife to pledge his credit, such husband will not be liable for a debt incurred by his wife with a tradesman with whom she has not previously dealt. But if she has had

(*a*) 2 Black. Comm., 436.
(*b*) *Per* Jeune, Pres., *Tasker* v. *Tasker*, L. R. (1895), P., 1.
(*c*) *Seaton* v. *Benedict*, 5 Bing., 28.
(*d*) *Renaux* v. *Teakle*, 8 Ex., 680; *Jolly* v. *Rees*, 33 L. J. C. P., 177.

dealings with a tradesman on the credit of her husband, who has paid the tradesman without objection, the tradesman has a right to assume, in the absence of notice to the contrary, that such is an authority to the wife (*a*).

Where Husband and Wife are living apart.

If the husband and wife are not living together there is no presumption that she has authority to pledge his credit, even for necessaries. In such case, therefore, it behoves a tradesman to be cautious; for the burden of proof will rest with him to show that the wife had authority, under the circumstances, to pledge her husband's credit (*b*).

If, without any justification, a husband turns his wife out-of-doors, or if she, owing to his ill-treatment of her, is obliged to leave his house, he will still be liable to maintain her, and if he fails to do so, or to make her a sufficient allowance, she has power to pledge his credit for what are strictly necessaries (*c*).

If the husband becomes insane he continues liable for necessaries supplied to the wife (*d*); but not if she has a sufficient allowance to provide herself with necessary food, clothing, &c.

A husband is not bound to maintain a wife who has committed adultery, and is living apart from him, and who afterwards becomes chargeable to the union (*e*).

Deeds of Separation.

A deed of separation between husband and wife generally requires the intervention of trustees.

But in a recent case, where husband and wife had agreed to live apart on the terms that cross-summonses which they had taken out for assault should be withdrawn, that the wife should receive an allowance from the husband, and that she should indemnify him against claims for debts contracted by her, it was held by the Court of Appeal that the parties had power to make such a contract without the intervention of a trustee (*f*).

Harbouring a Married Woman.

A person who receives a married woman into his house, and allows her to remain there after he has received notice from

(*a*) *Debenham* v. *Mellon*, 49 L. J. C. L., 497.

(*b*) *Mainwaring* v. *Leslie*, 1 Moo. & Mal., 18; *Edwards* v. *Towells*, 5 M. & Gr., 624.

(*c*) *Rawlins* v. *Vandyke*, 3 Esp., 251; *Deare* v. *Soutten*, 9 L. R. Eq., 151; *Bazeley* v. *Forder*, 37 L. J. Q. B., 237.

(*d*) *Read* v. *Legard*, 6 Ex., 636.

(*e*) *Mitchell* v. *Torrington Union*, Div. Ct. (1897, Q. B. D.); and see *Law Journal*, July 10, 1897.

(*f*) *McGregor* v. *McGregor*, 21 L. R. (1888) Q. B. D., 424.

the husband not to harbour her, is liable to an Action for damages; unless the husband has, by cruelty or otherwise, forfeited his marital rights, turned her out of doors, or compelled her to leave him (*a*).

Debts incurred by a Reputed Wife.

If a man has permitted a woman, to whom he is not married, to use his name, live in his house as the mistress thereof, and pass for his wife, and in that character to contract debts, he will be liable to pay them, whether the tradesman who furnished the goods knew the circumstances to be so or not (*b*). Having recognised the woman as his wife, and allowed goods to be supplied at her residence on his credit, his liability continues until he gives notice to the tradesman supplying them, that he will no longer be responsible for her debts (*c*).

Married Woman Tenant for Life.

By the Settled Land Act, 1882, where a married woman, who if she had not been married would have been a tenant for life, or would have had the powers of a tenant for life under the provisions of that Act, is entitled for her separate use, or is entitled under any Statute passed or to be passed, for her separate property, or as a *femme sole*, then she, without her husband, has the powers of a tenant for life under that Act. And where she is otherwise entitled, then she and her husband together have those powers. A restraint on anticipation in the settlement does not prevent the exercise by her of any power under the Act. (45 & 46 Vict. c. 39, § 61.)

Life Assurance Effected by Married Men or Women.

Where a policy of assurance has been effected by a man on his own life, and is expressed to be for the benefit of his wife or his wife and children, or by any woman on her own life, and expressed to be for the benefit of her husband or of her children, a trust is created in favour of the objects therein named, and the insurance moneys will not be subject to his or her debts. (45 & 46 Vict. c. 75, § 11.)

Restraint on Anticipation.

Notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, for her benefit, and with her consent, bind her interest in any property. (44 & 45 Vict. c. 41, § 39.)

(*a*) Addison, Torts (6th ed.), 591.
(*b*) *Watson* v. *Threlkeld*, 2 Esp., 637.
(*c*) *Ryan* v. *Sams*, 17 L. J. Q. B., 271.

Where a married woman is entitled to property for her separate use without power of anticipation, the restraint on anticipation does not apply to income accrued due; and a judgment creditor may enforce the judgment against income accrued due at or before the date of the judgment (*a*).

In a recent case, a married woman had executed a deed reciting (as she was advised at the time) that her life interest in certain estates had ceased, and accordingly releasing the life interest in favour of her husband, who thereupon assigned his interest in the estates to a mortgagee; but upon the wife discovering subsequently that as a matter of fact her life interest had *not* determined, she thereupon repudiated the deed relinquishing it; and it was held that, being by the original settlement restrained from anticipation, she was not bound by the usual rule of estoppel (see *post*, p. 684), and she was accordingly at liberty to repudiate the deed and enforce, as against her husband's mortgagee, payment of the income under her life interest (*b*).

Dower.

Dower is the claim which a widow has for her life on the *freehold* lands of her husband, in fee simple or fee tail, at his decease, viz., one-third part. A marriage celebrated *bonâ fide* in Scotland entitles a woman to dower in England. A husband may bar dower (i) by a clause to that effect in his will; (ii) by declaration in the deed of conveyance to him; (iii) by disposing of his property in his lifetime.

Free Bench.

Free bench is the right which a widow has to a certain portion of her husband's *copyhold* estate. It varies according to the custom of the manor under which the copyholds are held, consisting in some manors of one-half the estate, in others one-third, one-fifth, or less.

(*a*) *Hood Barrs* v. *Heriot*, H. L. (E) (1896), A. C. 174.

(*b*) *Lady Bateman* v. *Faber and others*, in which the Court of Appeal confirmed the judgment of Kekewich, J., to the above effect, the Master of the Rolls (Sir N. Lindley) saying that "the authorities showed that a married woman could not by hook or by crook—even by her own fraud—deprive herself of the protection of restraint upon anticipation. He would say nothing as to the policy of the law, but it had been affirmed by the Married Women's Property Act; and the result was that a married woman could play fast and loose to an extent to which no other person could" (L.R. [1897] 2 Ch. 223; C.A. [1898] 1 Ch. 144).

SECTION III.—DIVORCE AND MATRIMONIAL CAUSES.

Previous to 1857, an actual dissolution of marriage could only be procured by an Act of Parliament obtained for the purpose, although divorce *a mensâ et thoro*—equivalent to a judicial separation—was obtainable in the Ecclesiastical Courts; and damages against an adulterer could only be obtained by resort to a Court of Law. But by an Act of that year (20 & 21 Vict. c. 85) the present Court was constituted, and empowered to deal with all actions arising out of breaches of the contract of marriage. The Court is now merged in the Probate, Divorce, and Admiralty Division of the High Court. The Act of 1857 applies only to England.

By an Act of 1858 (21 & 22 Vict. c. 93), the same Court was empowered to entertain legitimacy suits, whereby persons may seek to establish the validity of their own marriage, or the marriage of their parents, or that of their grandparents.

The principal remedies afforded to husband and wife in matrimonial suits are—

(1) *Divorce:* by which the marriage tie is dissolved.

(2) *Judicial separation:* whereby the marriage tie is not dissolved; but the wife is placed in the position of an unmarried woman (except that she cannot marry again, nor can the husband), and her husband cannot interfere in her concerns.

(3) *Nullity of marriage:* whereby the marriage of the parties may be declared null and void, by reason of a prior marriage of either of the parties, or insanity, or impotence; or for illegality through force having been used in obtaining the marriage, or by reason of fraud and imposition.

(4) *Restitution of conjugal rights:* being the remedy of either husband or wife, when one of them has without lawful excuse separated from the other; in which case the Court can order a return to cohabitation, and if the order be disobeyed, may commit the offender for contempt of Court.

Proceedings to obtain Divorce.

Divorce is such a separation of married persons, during their lives, as looses them from the nuptial tie, and leaves them free to inter-marry with others as soon as the decree *nisi* has been made absolute, or (in other words) a decree of *dissolution* of the marriage has been pronounced.

Any husband may present a petition to the Court, praying that his marriage may be dissolved on the ground that his wife has, since the celebration thereof, been guilty of adultery. But a wife cannot sue for a divorce on the ground of her hus-

band's adultery *alone*. If, however, he has been guilty of incestuous adultery (*a*), that alone is sufficient, or of bigamy with adultery, or of rape, or of sodomy or bestiality.

Any husband suing for a divorce by reason of his wife's adultery may claim damages from the adulterer.

It is very rarely that the Court will dissolve a marriage on the ground of the wife's adultery, if the husband has also been found by the Jury to have been guilty of adultery (*b*).

The grounds upon which a wife may present a petition, praying that her marriage may be dissolved, are (i) Adultery by her husband, coupled with cruelty towards his wife; or, (ii) Adultery by husband, coupled with desertion of wife without reasonable excuse for two years and upwards.

Cruelty towards a wife—such as, coupled with the husband's adultery, will entitle her to divorce—may arise apart from the actual display of physical violence: for instance, the communication to the wife of a certain loathsome disease will be "cruelty." In other cases the Court will take into consideration the husband's general course of conduct towards his wife, and if this is of a character tending to degrade her and subjecting her to annoyance and indignity injurious to her health, it will be held to establish cruelty (*c*).

Desertion by the husband may also be held to be established under circumstances differing from what is commonly termed "desertion" of the wife. Thus in 1890 the petition for divorce on the grounds of the husband's adultery and desertion, presented by a wife who was married in 1858 but had lived apart from her husband since 1870 under a separation deed, was dismissed for unreasonable delay. Subsequently she obtained a decree for restitution of conjugal rights, and this decree the husband disregarded. A decree *nisi* was thereupon granted (in 1895) for desertion (*i.e.*, for non-compliance with the restitution decree) and adultery (*d*) (see also *post*, p. 461).

Where a wife found her husband was keeping a mistress, she offered to forgive him provided he would break off the intimacy. Upon his refusing, and continuing in his misconduct, she left him and lived apart. This state of things

(*a*) That is, adultery with a woman with whom, if his wife were dead, he could not marry by reason of her being within the prohibited degrees of consanguinity or affinity.

(*b*) *Barnes* v. *Barnes*, 38 L. J. P. & M., 10.

(*c*) *Swatman* v. *Swatman*, 4 S. & T., 135.

(*d*) *Beauclerk* v. *Beauclerk* (No. 2), L. R. (1895), P. 220. In this case, the extent to which the impediment of delay is avoided by obtaining a restitution decree was discussed by the President (Sir F. Jeune).

having continued more than two years, it was held that the husband's conduct amounted to desertion, and such desertion, coupled with his adultery, entitled the wife to a divorce (*a*).

Insanity of Husband or Wife.

If husband or wife become insane at any time after marriage, that is no ground for instituting proceedings for divorce. If, however, either the sane or the insane party be guilty of adultery or other acts sufficient to entitle the innocent party to a divorce or judicial separation, insanity will be no bar to the proceedings. But, if the petitioner be insane, he (or she) must sue by his (or her) committee in lunacy.

As to Marrying again after Divorce.

After a decree *nisi* for a divorce has been made absolute either of the parties is at liberty to marry again: but no minister of the Church of England is compelled to perform the marriage ceremony for any person whose former marriage has been dissolved on the ground of adultery. It is entirely discretionary with such minister. But in the event of his refusal, he must allow his church or chapel to be used for the purpose by any other Church of England minister willing to perform the ceremony. (20 & 21 Vict. c. 85, §§ 57, 58.)

Condonation.

Condonation is a bar to divorce: it means forgiveness and reconciliation, and a blotting out of the offence; and if the petitioner has condoned the adultery or cruelty complained of, the petition will be dismissed, on proof of the condonation. Condonation may be expressed in words, or it may be implied from facts and circumstances.

In a recent case, where the husband had condoned his wife's adultery with A., not being aware of her adultery with B., it was held by the Court of Appeal that the condonation was not avoided by previous undisclosed adultery (*b*).

Connivance and Collusion.

Connivance is also a peremptory bar to divorce. By connivance is meant, that the complaining party was aware of the adultery or impropriety at the time it was committed, but shut his eyes to it, and took no steps to prevent it.

Having been "accessory to the adultery" is also a peremptory bar to divorce. This term has been defined as implying "one who, being absent at the time of the crime committed,

(*a*) *Pizzala* v. *Pizzala* (1896).
(*b*) *Bernstein* v. *Bernstein*, C. A. (1893) P., 292.

doth yet procure, counsel, or command another to commit the crime." For instance, if the husband procures and invites the adulterer, or knowingly prostitutes his wife, he is "accessory to the adultery," and incapacitated for suing for a divorce.

If an intimacy spring up between a married woman and a man of such a character as to be dangerous to her honour, and the husband knows so much of it as to perceive the danger, and yet purposely or recklessly disregards it, he is guilty of wilful misconduct which may conduce to adultery (*a*), and the Court, under such circumstances, will not decree a divorce.

Collusion is an equally peremptory bar to divorce. This arises where the parties to the suit come with alleged facts which have been preconcerted with fraud and corruption.

Judicial Separation.

This is generally considered the wife's remedy rather than the husband's; but either may sue for judicial separation on the ground of adultery, or of cruelty (*b*), or of desertion without cause for two years and upwards. A husband, in his petition for separation, may claim damages from the adulterer. (20 & 21 Vict. c. 85, § 16.)

By a decree of judicial separation the wife is placed in the position of a *feme sole* (or unmarried woman) with respect to property of every description which she may acquire or which may devolve upon her; she may dispose of such property in all respects as a *feme sole;* and if she die intestate it will go as if her husband were dead. But if any such wife should again cohabit with her husband, all such property will be held to her separate use, subject to any agreement in writing made between herself and husband whilst separate (§ 25).

Whilst separated, the wife will also be considered as a *feme sole* for the purposes of contract and of suing and being sued in any civil proceeding; and her husband will not be liable on her account in respect of any contract or tort, or

(*a*) *Dering* v. *Dering*, 37 L. J. Mat., 52.

(*b*) As to the grounds for a judicial separation, "it is not the law that persons can come into court and say that their lives are miserable, and therefore ask for separation. The law says that married people must live together, and having said that, the law also provides so as to ensure protection, but not protection against mere unhappiness or the causes of unhappiness. The parties who desire protection have to make out that the conduct of one of them has been such as to give rise to a reasonable apprehension of injury, physical or mental, if cohabitation be resumed. Abuse and violent language are not sufficient, unless so persistent as to give rise to a reasonable apprehension of danger" (*per* the President, Sir F. Jeune, in *Le Champion* v. *Le Champion*, reported in *Standard*, 14th November, 1896).

for any costs she may incur in an action. But where alimony has been decreed, unless it is duly paid by the husband, he will be liable for necessaries supplied for the wife's use (§ 26)

Nullity of Marriage.

The grounds upon which a man or woman may sue for a decree of nullity of marriage are:—(1) A prior marriage of either of the parties; (2) Impotency of either of the parties; (3) Relationship within the prohibited degrees; (4) Marriage without licence or due publication of banns; (5) Insanity of either of the parties; (6) Force, fraud, or mistake.

In suits of this nature the Court always acts with extreme caution, as the legitimacy of children may be brought into question, together with the title and heirship to property.

A suit for nullity of marriage cannot be entertained after a decree of judicial separation by reason of adultery has been pronounced (*a*).

Where a young woman who, at the age of seventeen, acting under the duress of her mother and the bridegroom, had gone through the ceremony of marriage in church under the idea that it was a form of betrothal only, and six years afterwards applied to the court to have the marriage annulled, she never having cohabited with her husband, and the evidence going to show that she had not been a free agent in the proceedings or a consenting party to the supposed marriage, a decree annulling the marriage was granted (*b*).

Restitution of Conjugal Rights.

A suit for restitution of conjugal rights may be brought either by husband or wife, if one has withdrawn from the society of the other without sufficient reason. But if either party has been guilty of adultery, cruelty, or such like, that is held to be a sufficient excuse for living apart; and the Court, on proof thereof, will not grant restitution of conjugal rights.

Where a false charge of having committed an unnatural criminal offence had been brought by a wife against her husband, it was determined that this charge, although persisted in, was not sufficient evidence of legal cruelty to support a petition by the husband for judicial separation. But such conduct on the wife's part was held to justify the Court in rejecting a petition by her for restitution of conjugal rights (*c*).

(*a*) *Bancroft* v. *Bancroft*, 34 L. J., P. & M., 70.
(*b*) *Per* Gorell Barnes, J., in *Ford* v. *Stier*, L. R. (1896) P. 1.
(*c*) *Russell* v. *Russell*, C. A. (1895), P. 315; H. L. (D.) 1897, W. N. 76.

In a recent case it was shown that a decree for restitution of conjugal rights obtained by a husband is practically valueless, where the wife chooses to ignore it. A wife having refused to live with her husband on his return from abroad—whither he had gone, with her consent, immediately after the marriage—he obtained a decree for restitution of conjugal rights, which the wife refused to obey. The husband, taking the law into his own hands, then "abducted" his wife and confined her to the house, refusing to allow her relatives to hold any communication with her. No ill-usage, beyond the abduction and the restriction to the house, was alleged against the husband, and upon the wife's relatives applying for *Habeas corpus* against him it was refused, on the ground that a husband has a right to the custody of his wife unless he uses it for some cruel and oppressive purpose. Upon appeal, however, the writ was granted, the Lord Chancellor (Lord Halsbury) and two other Appeal Judges holding that where a wife refuses to live with her husband he is not entitled to keep her in confinement in order to enforce restitution of conjugal rights (*a*).

In another recent case where a wife refused to obey an order of the Court to return to her husband, and there was a settlement of property made on the marriage, it was held that the settlement might be varied in favour of the husband, thus compelling the wife to make the husband an allowance (*b*).

Non-compliance with Decree deemed to be Desertion.

If the Respondent shall fail to comply with a decree of the Court for restitution of conjugal rights, such Respondent shall thereupon be deemed to have been guilty of desertion without reasonable cause; and a suit for judicial separation may be forthwith instituted, and a sentence of judicial separation may be pronounced, although the period of two years may not have elapsed since the failure to comply with the decree for restitution of conjugal rights; and when any husband who has been guilty of desertion, by failure to comply with a decree for restitution of conjugal rights, has also been guilty of adultery the Court (upon the petition of the wife) may pronounce a decree *nisi* for the dissolution of the marriage on the grounds of adultery coupled with desertion. (47 & 48 Vict. c. 68, § 5.)

Settlements of Property.

After a final decree for dissolution of marriage, the Court

(*a*) *Reg.* v. *Jackson*, C. A. (1891) 1 Q. B. 671. See also observations of Dr. Lushington, in giving judgment in *Lockwood* v. *Lockwood* (2 Curteis, 301), quoted in Preface to *Wharton's Law Lexicon*, 9th edition (1892).

(*b*) *Per* the President, in *Swift* v. *Swift*, 88 L. J. 449.

has a discretionary power to exclude a guilty party, either partially or wholly, from the benefit of property settled upon the parties to the marriage.

Where the application for restitution of conjugal rights is by the husband, if it shall appear to the Court that the wife is entitled to any property, either in possession or reversion, or is in receipt of any profits of trade or earnings, the Court may, if it shall think fit, order a settlement to be made, to the satisfaction of the Court, of such property, or any part thereof, for the benefit of the Petitioner and of the children of the marriage, or either or any of them; or may order such part as the Court may think reasonable of such profits of trade or earnings, to be periodically paid by the Respondent to the Petitioner, for his own benefit; or to the Petitioner, or any other person for the benefit of the children of the marriage, or either or any of them. (47 & 48 Vict. c. 68, § 3.)

Costs in Divorce Suits.

As the wife is generally supposed to have no separate income, and therefore could not be provided with the means of proceeding with her suit, she is entitled to have her costs taxed *de die in diem* (from day to day), as against her husband, whether she is Petitioner or Respondent in the suit. When the costs have been taxed, a summons may be taken out, returnable before the Judge Ordinary, who will then, unless good cause be shown to the contrary, order the husband to pay them, and also to pay a further sum into Court, or give security to meet the wife's costs of the hearing.

If in a matrimonial suit the wife be unable to go to trial in consequence of the non-payment of her costs by the husband, she should either apply at the Judges' Chambers to have the case stand over, or appear in Court on the day of hearing and state her inability to proceed (*a*).

Although a wife is in general a privileged suitor with regard to costs, where she has separate property she is liable, like any other unsuccessful suitor, to be condemned in costs (*b*).

Upon the principle that the whole property is supposed in law to belong to the husband, he is generally obliged to pay the expenses of litigation on both sides: except in cases where the wife is found guilty of adultery with a Co-respondent; in which case the Court generally orders the Co-respondent to pay the costs on both sides.

(*a*) *Curtis* v. *Curtis*, 38 L. J. P. & M., 9.
(*b*) *Milne* v. *Milne*, 40 L. J. P. & M., 13.

Decree Nisi.

Every decree made by the Court for a divorce, judicial separation, or for nullity of marriage is, in the first instance, a decree *nisi* only; and it will not be made absolute till after the expiration of six months from the pronouncing thereof, unless the Court shall otherwise direct. During that period any person is at liberty to show cause why the decree should not be made absolute, by reason of collusion of the parties, or of material facts not having been brought before the Court.

Appeals.

All appeals under the Divorce Acts must now be brought to the Court of Appeal, whose decision will be final, except in the case of the grant or refusal of a decree on a petition for dissolution or nullity of marriage, or declaration of legitimacy, or upon a question of law on which the Court of Appeal give leave to appeal: and, save as aforesaid, no appeal will lie to the House of Lords. (44 & 45 Vict. c. 68, § 9.)

Periodical Payments in Lieu of Attachment.

A decree for restitution of conjugal rights shall not be enforced by attachment; but where the application is by the wife, the Court may, at the time of making such decree, or at any time afterwards, order that, in the event of such decree not being complied with, within any time in that behalf limited by the Court, the Respondent shall make to the Petitioner such periodical payments as may be just; and such order may be enforced in the same manner as an order for alimony in a suit for judicial separation. (47 & 48 Vict. c. 68, § 2.)

Alimony.

Alimony is the allowance directed to be made to a wife out of her husband's estate, for her support whilst living apart from him. It is of two kinds:—Alimony *pendente lite* (during a matrimonial suit): and *permanent* alimony, which is allotted to a wife on her proving herself entitled to a separate maintenance. A wife is not entitled to alimony if she leave her husband without just cause.

Alimony *pendente lite* is usually about one-fifth of the husband's net annual income: and it is ordered by the judge to be paid to the wife during the suit: whether such suit was commenced by or against the husband, and whatever its nature.

Permanent alimony is more ample than alimony pending a suit: it is sometimes the third of the husband's income, at

other times a moiety; and is larger in proportion to a small than a large income. If the husband had small means on marriage, and the wife a large fortune, the Court will generally award a good proportion to the wife. The husband may be compelled to secure either a gross sum or an annual sum for the life of the wife, as may be deemed reasonable by the Court.

In allotting permanent alimony in suits for judicial separation, the Court cannot allot a larger proportion than one moiety of the joint income, although the greater part of the fortune may have come from the wife (*a*).

If a husband, in order to evade payment of alimony, meditates a departure from this country, he may be restrained by the writ of *Ne exeat regno.*

When it happens that a decree for dissolution of a marriage is obtained against a husband who has no property that can be settled for the benefit of the wife, the Court may make an order on the husband for payment, during their joint lives, of such monthly or weekly sums for her maintenance as the Court may think reasonable. If the husband should afterwards become unable to make such payment, the Court may discharge or modify the order, or suspend the payments for a time, and again revive them, as may seem fit.

Summary Remedies of Married Women.

By the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), which came into operation on 1st January, 1896, further powers have been given to magistrates for the protection and assistance of married women (*b*).

Any married woman whose husband shall have been convicted summarily of an aggravated assault upon her, or convicted upon indictment of an assault upon her, and sentenced to pay a fine of more than five pounds or to a term of imprisonment exceeding two months, or whose husband shall have deserted her, or whose husband shall have been guilty of persistent cruelty to her, or wilful neglect to provide reasonable maintenance for her or her infant children whom he is legally liable to maintain, and shall by such cruelty or neglect have caused her to leave and live separately apart from him,

(*a*) *Haigh* v. *Haigh*, 38 L. J. P. & M., 37.

(*b*) The Act of 1895 repeals the provision for summary remedies made by the Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19, s. 4), and by the Married Women (Maintenance in case of Desertion) Act, 1886 (49 & 50 Vict. c. 52); but it leaves untouched the like remedies available in the Probate and Divorce Division.

may apply to any court of summary jurisdiction acting within the district, in which any such conviction has taken place, or in which the cause of complaint shall have wholly or partially arisen, for an order or orders under the Act: provided that where a married woman is entitled to apply for an order under this section on the ground of the conviction of her husband upon indictment, she may apply to the Court before whom her husband has been convicted, and that Court shall, for the purposes of this section, become a court of summary jurisdiction, and shall have the power without a jury to hear an application and make the order or orders applied for (§ 4).

The court of summary jurisdiction to which any application under this Act is made may make an order or orders containing all or any of the provisions following, viz.:—

(i) A provision that the applicant be no longer bound to cohabit with her husband (which provision while in force shall have the effect in all respects of a decree of judicial separation on the ground of cruelty):

(ii) A provision that the legal custody of any children of the marriage between the applicant and her husband, while under the age of sixteen years, be committed to the applicant:

(iii) A provision that the husband shall pay to the applicant personally, or for her use to any officer of the Court or third person on her behalf, such weekly sum not exceeding two pounds as the Court shall, having regard to the means of both husband and wife, consider reasonable:

(iv) A provision for payment by the applicant or the husband or both of them, of the costs of the court and such reasonable costs of either of the parties as the Court may think fit (§ 5).

No orders are to be made under the Act on the application of a married woman if it shall be proved that such married woman has committed an act of adultery, unless the husband has condoned, or connived at, or by his wilful neglect or misconduct conduced to the adultery (§ 6): and if any married woman upon whose application an order shall have been made shall voluntarily resume cohabitation with her husband, so shall commit an act of adultery, such order shall upon proof thereof be discharged. Orders made under the Act may be varied or discharged upon fresh evidence (§ 7).

The payment of any sum of money directed to be paid by any order under this Act may be enforced in the same manner as the payment of money is enforced under an order of affiliation (§ 9).

SECTION IV.—INFANCY.

Who are Infants.

The English law fixes the age of majority at twenty-one, all persons below that age being infants or minors. An infant attains his majority on the first moment of the day before his twenty-first birthday. Thus, an infant born on 1st January, 1878, will attain his majority on the first moment of 31st December, 1898.

An infant cannot bring an Action in his own name, but may sue as Plaintiff by his "next friend," and may, in like manner, defend an Action by his guardian appointed for that purpose (*a*).

Unborn Infants

An infant *en ventre sa mère* is supposed in law to be born, for many purposes.

Thus, it is capable of having a legacy bequeathed to it, or surrender of a copyhold estate made to it (*b*). It may have a guardian assigned to it (*c*); and it is enabled to have an estate limited to its use, and to take afterwards by such limitation, as if it were then actually born (*d*).

An unborn infant may also take by descent, but until its birth the presumptive heir may enter and receive the profits for his own use (*e*).

Contracts by Infants (*Infants' Relief Act*, 1874).

Previously to 1874 the principle which regulated contracts by infants was, that whatever was for the benefit of the infant was only voidable on his attaining full age, and not necessarily void, and he might ratify such contracts after he was of full age.

But in that year important alterations were made by Parliament in the law affecting contracts by infants and the ratification of such contracts, so that now all contracts by infants for the repayment of money lent or to be lent, or for goods (except necessaries), are absolutely void. (37 & 38 Vict. c. 62, § 1.)

(*a*) R. S. C. 1883, O. xvi. r. 16.
(*b*) 1 Black., Comm., 130. (*c*) 12 Car. II. c. 24.
(*d*) 10 Wm. III. c. 22 (2 Rev. Stat., 85).
(*e*) *Goodtite* v. *Newman*, 3 Wils., 526.

Ratification of Contracts made during Infancy.

Further, no Action shall be brought to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age. (37 & 38 Vict. c. 62, § 2.)

It has been held (but upon doubtful authority) that promises of marriage are within the meaning of this Act; and, therefore, that an Action for the breach of a promise of marriage made during infancy cannot be sustained, notwithstanding ratification after full age (*a*). But the soundness of this decision has been questioned (*b*).

Whether there be a ratification after full age of a promise made in infancy, or a new promise made after full age, is a question to be left to the jury (*c*).

Persons of age, who contract with infants, are bound, though the infant is not (*d*).

Infants as Shareholders.

An infant, however, may hold shares in a company, and he can subscribe a memorandum of association (*a*), although he cannot be sued for calls on his shares until he comes of age; and then he can only avoid the liability if he has repudiated the shares before coming of age, or within a reasonable time afterwards (*e*).

A person who takes a share in a railway company, for instance, is not simply entering into a contract, but purchasing an interest in a subject of a permanent nature with certain obligations attached to it; and those obligations he is bound to discharge, though they arose while he was a minor, unless he has renounced the interest (*f*).

Liability for Shares taken by an Infant.

Where an infant applied for shares in a Company, which were allotted to him, but he never paid any deposit in respect of them, and he took no steps to repudiate the shares till 14

(*a*) *Coxhead* v. *Mullis*, 47 L. J. C. L. D., 761.
(*b*) See *Ditcham* v. *Worrall*, 49 L. J. C. P., 688.
(*c*) *Holmes* v. *Brierley*, C. A., W. N. (1888), 158.
(*d*) Bac., Abr., Infants (T.), 4.
(*e*) *Newry and Enniskillen Railway Co.* v. *Coombe*, 18 L. J. Ex., 325, *Dublin and Wicklow Railway* v. *Black*, 22 L. J. Ex., 94.
(*f*) Pollock on Contracts, 6th ed., 64.

months after he came of age, when the company was ordered to be wound up; it was held that he could not then repudiate them, and that his name must be placed on the list of contributories (*a*).

Necessaries.

Infants, when they are not living with their parents, may contract to a certain extent—namely, for "necessaries." It is generally left to the Jury to decide what are necessaries; but food, clothing, lodging, and education suitable to a person's degree, and certain jewellery for persons of rank, have been held to be necessaries. In a modern case it was held that the question as to what are necessaries is one of mixed law and fact: but the onus of proving that the articles are necessaries lies upon the Plaintiff: and then the preliminary question is for the Judge whether there is any evidence on which the Jury can properly find for the Plaintiff (*b*).

An infant's bill or promissory note, though given for necessaries, cannot be sued upon (*c*). But in a case where a Plaintiff had advanced money to an infant, partly in order to pay for necessaries, and the infant had by deed assigned a reversionary interest, it was held that the Plaintiff was entitled to repayment, but that the deed was not binding, so that the security could not be enforced (*d*).

A father is under no legal obligation to pay a debt incurred by a son, unless he has expressly agreed to be responsible (*e*), or authorised the son to incur the debt (*f*), even though the debt has been incurred for necessaries, no one being bound to pay another for maintaining his children unless he has contracted to do so (*g*).

If a father sees his son wearing a suit of clothes, it is a question for the jury whether he sanctioned the order for them (*h*).

When Contract Unfair to Infant.

A railway company having contracted with a number of colliers that, in consideration of reduced fares, the company should not be liable for negligence, and that their executors,

(*a*) Re *Constantinople Hotels Co.*, Ex parte *Ebbetts*, 39 L. J. Ch. 679.
(*b*) *Ryder* v. *Wombwell*, 38 L. J. Ex., 8.
(*c*) *Williamson* v. *Watts*, 1 Camp., 551.
(*d*) Per Jessel, M. R., Re *Howarth*, L. R. 8 Ch. 415.
(*e*) *Andrews* v. *Garrett*, 6 C. B., 292; *Moon* v. *Towers*, 8 C. B., 611.
(*f*) *Mortmore* v. *Wright*, 6 M. & W., 482
(*g*) *Seaborne* v. *Maddy*, 9 C. & P., 497.
(*h*) *Law* v. *Wilkins*, 6 A. & E., 718.

administrators, and relatives should indemnify the railway against any Action for negligence, it was held that in the case of an "infant" the contract was so far prejudicial as to be unfair to him, and was therefore not binding on him (*a*).

Responsibility of Infants.

An infant is generally no less liable than an adult for *wrongs* committed by him, subject only to his being in fact of such age and discretion that he can have a wrongful intention, where such intention is material; but he *cannot be sued for a wrong* when the cause of action in substance *rests on contract*, or is so directly connected with the contract that the Action would be an indirect way of enforcing the contract, which the law does not allow (*b*). Thus it was held that an infant who had obtained the lease of a furnished house could not be made liable for use and occupation (*c*). Where, however, an infant had agreed to take a house, and to pay a certain sum for the furniture therein, and having paid part of this sum entered on occupation of the house, and used the furniture during several months, it was held that he was not entitled under the Infants' Relief Act, 1874, to recover back the amount paid by him (*d*).

Thus infancy is no defence to an action of tort—that is, for a wrong done independently of contract. "If an infant commit an assault or utter slander, God forbid," said Lord Kenyon, C.J., "that he should not be answerable for it" (*e*).

Where an infant undergraduate had hired a horse for riding, on the express condition that it was not to be used for jumping, but took it out with a friend to whom he lent the horse, and allowed it to be used for jumping various hedges and ditches, with the result that the horse staked itself on a fence and was fatally injured, he was held to have committed an "independent tort" for which he was liable to the owner, apart from any question of contract, just as if he had ridden the horse without hiring or the leave of the owner (*f*).

Crimes by Infants.

A child under seven years of age is considered in English law incapable of committing a crime (*g*). If a child over

(*a*) *Flower* v. *London and North Western Railway Company*, C. A. (1894), 2 Q. B., 65.
(*b*) Pollock on Contracts, 6th ed. 72.
(*c*) *Lemprière* v. *Lange*, L. R. (1879), 12 Ch. D. 675.
(*d*) *Valentini* v. *Canali*, L. R. (1893), 24 Q. B. D. 166.
(*e*) *Jennings* v. *Rundall*, 8 F. R. 335.
(*f*) *Burnard* v. *Haggis*, 14 C. B. N. S. 45.
(*g*) 1 Hale P. C. 27, 28; 1 Russell on Crimes, 7.

seven but under fourteen years of age is put on trial for a crime, it will be left to the jury, if they find he committed the offence charged against him, to say whether he had a guilty knowledge of doing wrong (*a*). An infant over the age of fourteen is held responsible for a crime.

Undue Influence.—Voidable Transaction.

A girl, *under age*, gave a promissory note as surety for her step-father. Soon after coming of age she executed, under his influence (as the obligee knew), but with knowledge of the invalidity of the promissory note, a bond to secure payment of the same debt six years after date. Shortly after the expiration of the period of six years, and at the age of 29, she executed another bond to secure the same debt, under threat of legal proceedings. She was afterwards sued on this bond, and thereupon filed a bill in equity to avoid the bonds, and to restrain the Action. It was held that she was entitled to the relief prayed, and that although the bill was not filed till nearly seven years after the last bond was executed, she was not barred by the delay.

Post Obit *Securities.—Bargains with Heirs-expectant.*

A *Post obit* bond is an agreement made on receipt of money by the obligor, to pay a sum exceeding the sum so received together with the legal interest thereof, on the death of the person upon whose decease he expects to become entitled to some property (*b*). These instruments are sometimes set aside in equity when made by heirs and other expectants.

Mere inadequacy of price is *not* sufficient to set aside a purchase of *interests in possession*, unless the inadequacy is so great as to be a clear fraud. But with regard to expectants and reversioners the Court is more strict. The *onus* then lies upon the person dealing with the reversioner to show that the transaction was reasonable, or the price adequate. Where any transaction with an expectant heir or reversioner is set aside on the sole ground of inadequacy of price, the Court, acting upon the maxim "that he who seeks equity must do equity," will only give relief upon payment of the sum actually advanced, with interest and costs (*c*).

(*a*) *R.* v. *Owen*, 4 C. & P. 236.
(*b*) Story, Eq. Jur., § 342.
(*c*) *Earl of Chesterfield* v. *Sir Abm. Jansen*, 1 Lead. Ca. Eq., 428.

SECTION V.—CUSTODY AND CONTROL OF CHILDREN.

Guardians and Wards of Court.

The term "ward of court," in strictness, means a person under the care of a guardian formally appointed by the Court; but the term has been extended to infants who are brought under the authority of the Court by an application to it on their behalf, though no guardian may be appointed (*a*).

Guardians of the property and persons of infants are appointed by deed or will, as well as or by the Court, and when an Action is commenced as to the estate or person of an infant, such infant becomes a Ward of Court, and is entitled to the protection of the Court, although it may have a parent or guardian.

The Court exercises a wide jurisdiction over the parents and guardians of children entitled to property on coming of age, and will dismiss guardians who have acted dishonestly, unfairly, or improperly, towards their wards, and compel them to account for the rents and profits of the minor's estates (*b*).

In case of dispute or dissatisfaction, the Court will direct the manner in which the ward is to be educated and maintained, how advanced in life, and in what school or university it should be placed; and give such other orders and directions as it may consider necessary and advisable (*c*).

If a guardian become bankrupt, he may be removed from his office. And when a woman who has been made a guardian marries, a new appointment must be made, as she is then no longer capable of acting as guardian, being under the influence and control of her husband.

Religious Education of Wards of Court.

Although by law it is the right of the father to have the care and custody of his infant children and to have them brought up in his own religion, the welfare of the infants is the paramount consideration, and the Court has jurisdiction in a proper case to deprive a father of the custody of his children,

(*a*) Simpson on Infants, 223.
(*b*) Smith, Eq. Jur., tit. Infants; *Eyre* v. *Countess of Shaftesbury*, 2 White & T., L. C. Eq. (6th ed.), 693.
(*c*) *Allen* v. *Jackson*, 45 L. J., Ch., 310.

and to disregard his wishes as to their religious education. Where a Roman Catholic father had allowed his two infant children by a deceased Protestant wife to be brought up as Protestants until one of them was fifteen and the other eleven years of age, and his conduct to them, in the view of the Court, showed that he had abdicated his parental rights, upon his applying to the Court for an order that the children (who were wards of Court) might thenceforth be brought up in the Roman Catholic faith, the application was refused, on the grounds that it would be injurious to the welfare of the children that their religious training should be altered, and that, having regard to the conduct of the father and the circumstances of the case, he ought not to be allowed to resume his parental authority in that behalf (*a*).

Marriage with a Ward of Court.

The sanction of the Court must be obtained for the lawful marriage of a ward; and any person who marries a ward, whether male or female, without such permission, or who is wilfully instrumental in bringing about such marriage, will be liable to the censure of the Court, and may be committed to prison for contempt of Court. If a man marries a ward without such consent, the Court in its discretion will settle the property exclusively on the ward and her children, or otherwise as it may deem advisable.

Custody of Infants.

The law with regard to the custody of infant children has been made the subject of repeated legislation, beginning with a statute passed more than two centuries ago (12 Ch. II., c. 24), which contained a provision enabling a father, even during minority, to appoint guardians for his children either by deed or will (*b*), but since the Wills Act (1 Vict. c. 26), which came into operation 1st January, 1838, the appointment of a guardian by a minor can only be made by deed.

By subsequent Acts, from time to time, the rights of a mother over her infant children have been recognised and declared. By Talfourd's Act (2 & 3 Vict. c. 54), the mother was given access to and custody of her children under seven years of age. The age of seven was extended by the Infants' Custody Act, 1873, repealing Talfourd's Act, and giving

(*a*) In re *Newton* (*Infants*) C.A. (1896) 1 Ch. 740.
(*b*) *Sleeman* v. *Wilson*, L. R. 13 Eq. 36.

the Chancery Division power to order that the mother may have access to and custody of her infant children under 16 years of age, subject to such regulations as the Court may deem proper (36 & 37 Vict. c. 12). But see now the provisions of the Act of 1886, under the next heading.

The Court follows the rules of equity in interfering with the right of a father to the custody of his children where he applies for a *Habeas corpus* to obtain possession of them (*a*). Therefore, where children are in proper custody they will not be removed into the custody of their father if (for instance) he is a man of habitual intemperance.

And the Court will not hesitate, if necessary in the interests of the child, to refuse the legal guardian the custody of the child, even without misconduct on the guardian's part (*b*).

Guardianship of Infants Act, 1886.

By this Act (49 & 50 Vict. c. 27), the mother was given co-ordinate rights with a father in the matter of the guardianship of their children, the previous law and practice being materially amended.

It is now provided that on the death of the father the mother, if surviving, shall be guardian either alone, if no guardian has been appointed by the father, or jointly with any guardian appointed by the father. When no guardian has been appointed by the father, or if the guardian or guardians appointed by the father are dead or refuse to act, the Court may, if it shall think fit, from time to time appoint a guardian or guardians to act jointly with the mother (§ 2).

The mother of any infant may by deed appoint guardians after the death of herself and the father of such infant (if such infant be then unmarried), and where guardians are appointed by both parents they are to act jointly. And the mother is also empowered to make a *provisional* nomination of some fit person or persons to act jointly with the father after her death, and the Court, after her death, if satisfied that the father is unfitted to be the sole guardian of his children, may confirm such appointment, or make such other order in respect of the guardianship as the Court shall think right (§ 3).

The Act further provides that the Court may, upon the application of the mother of any infant, make such order as it may think fit regarding the custody of such infant and the right of access thereto of either parent, having regard to the

(*a*) In re *Goldsworthy*, 2 L. R. Q. B. D., 75.
(*b*) *Reg.* v. *Gyngall*, C. A. (1893) 2 Q B., 232.

welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father (§ 5).

In "having regard to . . . the conduct of the parents and to the wishes as well of the mother as of the father," under this section, the Court will not treat the parents differently the one from the other, but will take the whole conduct and wishes of both parents into consideration, and will in a proper case give a mother the custody of her infant children, notwithstanding that she may have been guilty of matrimonial misconduct (*a*).

Custody of Infants under Separation Deed.

By the Infants' Custody Act, 1873, no agreement contained in any separation deed made between the father and mother of an infant or infants shall be held to be invalid by reason of its providing that the father of such infant or infants shall give up the custody or control thereof to the mother; provided that no Court shall enforce any such agreement if the Court be of opinion that it will not be for the benefit of the infant or infants to give effect thereto. (36 & 37 Vict. c. 12, § 2.)

Custody of Children Act, 1891.

By this Act (54 Vict. c. 3), where the parent of a child applies to the High Court of Justice, or (in Scotland) the Court of Session, for a writ or order for the production of the child, and the Court is of opinion that the parent has abandoned or deserted the child, or that he has otherwise so conducted himself that the Court should refuse to enforce his right to the custody of the child, the Court may in its discretion decline to issue the writ or make the order (§ 1).

If at the time of such application the child is being brought up by another person, or is boarded out by the guardians, or (in Scotland) a parochial board, the Court, if it orders the child to be given up to the parent, may further order that the parent shall pay the whole of the costs properly incurred in bringing up the child, or a just and reasonable portion thereof (§ 2).

Prevention of Cruelty to Children Act, 1894 (*b*).

By this Act (57 & 58 Vict. c. 41) the powers of parents over their children, and of other persons having children in

(*a*) In re *A and B* (*Infants*), C. A. (1897), 1 Ch. 786.

(*b*) This is an Act amending the Prevention of Cruelty to Children Act of 1889. It must not be confounded with a previous Act of 1894 on the same subject (57 & 58 Vict. c. 27). The last-mentioned Act, and also the Act of 1889, were repealed by this Act, which re-enacts the substance of their provisions.

charge, are stringently restricted in cases of cruel or oppressive treatment.

Any person over the age of 16 years who, having the custody of a child under 16, wilfully assaults, ill-treats, neglects, abandons, or exposes such child in a manner likely to cause unnecessary suffering or injury to health, will be guilty of a misdemeanor; and liable on conviction on indictment to a fine not exceeding £100, or (alternatively, or in addition) to imprisonment for two years; and on summary conviction to a fine not exceeding £25, or (alternatively, or in addition) to imprisonment for six months. A person may be convicted of an offence under this section, notwithstanding the death of the child; and if a person indicted under this section was knowingly interested in any sum of money accruable or payable on the death of the child, the Court may increase the amount of the fine to £200, or (in lieu of any other penalty under the section) pass sentence of penal servitude for five years (§ 2).

Any person who (i) causes any child, being a boy under 14, or a girl under 16, to be in any street, premises, or place for the purpose of begging or receiving alms; or (ii) causes any such child to be in any street, or in any premises licensed for the sale of any intoxicating liquor, other than premises licensed for public entertainments, for the purpose of performing for profit, or offering anything for sale, between nine P.M. and six A.M.; or (iii) causes any child under the age of eleven years to be at any time in any street, or in any premises licensed for the sale of intoxicating liquor or for public entertainments, or in any circus or other place of public amusement to which the public are admitted by payment, for the purpose of performing for profit, or offering anything for sale; or (iv) causes any child under 16 to be trained as an acrobat, contortionist, or circus performer, or for any dangerous performance, shall, on summary conviction, be liable to a fine not exceeding £25, or (alternatively, or in addition) to imprisonment for three months. But the provision in paragraph (iv) is not to apply in the case of a person who is the parent or legal guardian and himself trains the child (§ 2).

Power is given to any constable to take into custody without warrant any person who (i) within view of such constable has committed an offence of cruelty under the Act, or (ii) who he has reason to believe has committed such an offence if he has ground for believing such person will abscond, or if (in either case) the name and residence of such person cannot be

ascertained (§ 4); and any constable may take to a place of safety any child in respect of whom an offence of cruelty under the Act has been committed, to there be detained until it can be brought before a court of summary jurisdiction (§ 5).

Where a person having the custody of a child under 16 has been (i) convicted of committing in respect of such child an offence under the Act; or (ii) committed for trial for any such offence; or (iii) bound over to keep the peace towards such child, any person may bring the case before a petty sessional court; and the Court, if satisfied on inquiry that it is expedient so to deal with the child, and if the parent of the child has been privy to the offence against it, may order that the child be committed to the charge of a relation or some other fit person until it attains the age of 16 years, or for any shorter period; and any such order may be made in the absence of the child (§ 6).

The parent of any child so dealt with may by the same Court be ordered to contribute to its maintenance while so committed to the extent of £1 a week (§ 7).

In determining on the person to whom the child shall be so committed, the Court shall, if possible, select a person of the same religious persuasion as that to which the child belongs (§ 8).

If it appears to any stipendiary magistrate or to any two justices of the peace (or in case of urgency to a single justice of the peace) on information made on oath by any person *bonâ fide* acting in the interest of the child, that there is reasonable cause to suspect that a child under 16 (who need not be named) has been or is being assaulted, ill-treated, or neglected in a manner likely to cause the child unnecessary suffering or to be injurious to its health, such magistrate or justices may issue a warrant authorising any person named therein to search for such child, and to take it with or without search to a place of safety until it can be brought before a court of summary jurisdiction; and by the same warrant any person accused of an offence in respect of the child may be directed to be apprehended. Any person so authorised by warrant to search for any child, or to remove a child with or without search, may enter (if need be by force) any house, building, or other place specified in the warrant (§ 10).

Every such warrant is to be executed by a superior officer of police, who may be accompanied by the person making the information, unless the magistrate otherwise direct, and may also, if the magistrate so direct, be accompanied by a medical practitioner (§ 10).

PART XI.

WILLS, EXECUTORS AND ADMINISTRATORS, AND TRUSTEES.

SECTION I.—THE MAKING OF WILLS.

Wills: How to be Made.

With the exception of Wills made by soldiers on service and mariners at sea (see *post*, p. 485), no Will is valid unless it be in writing, and signed at the end by the Testator, or by some other person in his presence and by his direction; and such signature must be made or acknowledged by the Testator in the presence of *two* or more Witnesses present at the same time; and such Witnesses must attest and subscribe the Will in the presence of the Testator. If the signature is so placed at or after, or following, or under, or beside, or opposite to the end of the Will, and it is apparent on the face of the Will that the Testator intended to give effect by such signature to the writing signed as his Will, that will be sufficient; but no signature which precedes any part of the Will is effective, or gives effect to any disposition or direction inserted after the signature is made. [See further as to "Signing and Witnessing a Will or Codicil," *post*, p. 485.]

Formerly a seal was required to a Will, but such is now rendered unnecessary (*a*).

No Will made by any person under 21 years of age will be valid. (1 Vict. c. 26, § 7.)

Technical words are not necessary to give effect to any species of disposition in a Will. But where a Testator uses technical words, he is presumed to employ them in their legal sense. No figures or abbreviations should be used in a Will; everything should be written in words at full length.

(*a*) *Brudenell* v. *Elwes*, 1 East, 452.

Where Will has been Lost.

If a Will is known to have been made, but cannot be found after the Testator's death, and there is no evidence that it was revoked, secondary evidence may be received to prove its contents (*a*). Declarations of the Testator, written or oral, made either before or after the execution of the Will, are admissible in evidence for that purpose (*b*). And the contents of a lost Will may be proved by a single witness, even though interested, whose competency and veracity are unimpeached (*b*).

Where the contents of a lost Will are not completely proved, probate will be granted to the extent to which they are proved (*b*).

Restrictions on Perpetuities and Accumulations of Income.

Property cannot be tied up for longer than lives in being at the date of the settlement or of the death of the Testator, and within 21 years afterwards.

The desire of individuals to keep up their name and memory has often been opposed to this rule of law, and many shifts and devices have from time to time been tried to keep up a perpetual entail, or something that might answer the same end. But such contrivances have invariably been defeated.

A gift of an estate to the children of an unborn child would be absolutely void; so also a gift by Will "to the first son of A who shall attain 24 years," because such gifts exceed the time allowed by the above-mentioned rule, within which estates, whether real or personal, can be tied up (*c*).

Nor can income be accumulated indefinitely. A limit was set in the year 1800 by the Thellusson Act (*d*), which was occasioned by the extraordinary Will of the then late Mr. Thellusson, who directed the income of his property to be accumulated during the lives of all his children, grandchildren, and great-grandchildren, *who were living at the time of his death*, for the benefit of some future descendants to be living at the decease of the survivor (*e*). To prevent the repetition of such a cruel absurdity, the Act provided that, except for the purpose of paying debts or raising portions, accumulations of income must not be directed by Will or otherwise for any longer term than the life of the grantor or settlor, or 21 years

(*a*) *Brown* v. *Brown*, 8 E. & B., 876; *Harris* v. *Knight*, 15 L. R. P. D., 170.

(*b*) *Sugden* v. *Lord St. Leonards*, 1 L. R. P. D., 154, 250; and see *Woodward* v. *Gouldstone*, 11 L. R., App. Cas., 469, 485.

(*c*) *Brudenell* v. *Elwes*, 1 East, 452.

(*d*) 39 & 40 Geo. III. c. 98. (*e*) Williams, Real Propy. (17th ed.), 377.

from the death of the settlor or testator. The Act applies equally to Trusts for the accumulation of the income of personal estate as of real.

And now by an Act of 1892 (55 & 56 Vict. c. 58) the accumulation of income *for the purchase of land* is prohibited for any longer period than the minority of any person or persons who under the trusts directing accumulation would for the time being, if of full age, be entitled to receive the income.

As to Land purchased after Testator has made his Will.

Every man may dispose, by Will, of all such landed or real property as "he may hereafter possess," as well as that "he now has." Wills take effect as to real and personal estate as if executed immediately before the death of the Testator, unless a contrary intention appear by the Will (*a*). (7 Will. IV. and 1 Vict. c. 26, § 24.)

So with the Will of a married woman made during coverture, whether or not she has any separate property at the time of making it: and such Will shall not require to be re-executed or republished after her husband's death. (56 & 57 Vict. c. 63, § 3.)

Testamentary Capacity.—Undue Influence.—Weakness of Intellect.

Fraud and imposition upon weakness of mind will be held a sufficient ground for setting a Will aside.

Although a man may have a mind of sufficient soundness and discretion to manage affairs in general, yet if such a dominion or influence be obtained over him as to prevent his exercising that discretion in the making his Will, or sometimes even if he entertain an unnatural antipathy to those who are near to him in blood, he cannot be considered as having such a disposing mind as will give it effect (*b*).

In cases of weakness of mind arising from the near approach of death, stronger proof is required that the contents of the Will were known to the Testator (*c*), and that it was his spontaneous act (*d*).

A suspicion is justly entertained of a Will conferring large benefits on the person by whom or by whose agent it was prepared (*e*), or of a Will in favour of a medical attendant with whom Testator resided (*f*), or of his confidential adviser.

(*a*) As to the effect of this rule in a recent case, see foot-note to p. 630.
(*b*) *Mountain* v. *Bennett*, 1 Cox, 355.
(*c*) *Mitchell* v. *Thomas*, 6 Moo., P. C. C., 137.
(*d*) *Tribe* v. *Tribe*, 1 Rob., 775; 13 Jur., 793.
(*e*) *Paske* v. *Ollatt*, 2 Phillim., 323.
(*f*) *Jones* v. *Goodrich*, 5 Moo., P. C. C., 16.

Where the mental capacity of the Testator is duly proved, it will be presumed that he was cognizant of the contents (*a*).

The test of a person being of unsound mind in a legal sense is the existence of a delusion, or a belief in facts which an ordinary person would not credit: and therefore mere eccentricity of habits, or perversion of feeling and conduct, forming what is termed "moral insanity," do not constitute legal incapacity (*b*). To constitute a lucid interval, absence of the disease itself, not of the delusion only, must be shown (*c*).

The mere fact that a Testator is subject to insane delusions is no sufficient ground for setting a Will aside, unless the general faculties of his mind have thereby become affected, and delusions have influenced him in the disposition of his property.

Domicile of Testator.

Wills of British subjects made out of the United Kingdom, as regards personal estate, were formerly required to be made according to the law of the place where made, or of the place of domicile; but now it is provided that every Will and other testamentary instrument made out of the kingdom, by a British subject (whatever may be the domicile of such person at the time of making the same, or at the time of his or her death), shall, as regards personal estate, be held to be well executed if made according to the law of the place where made, or where such person was domiciled when the same was made. (24 & 25 Vict. c. 114, § 1.)

And as to Wills made *within* the United Kingdom by a British subject (whatever the domicile of such person at the time of making the same, or at the time of his or her death), they are to be upheld if executed according to the laws in force in that part of the United Kingdom where the same is made. (24 & 25 Vict. c. 114, § 2.)

No Will, &c., shall be held to be revoked or to be invalid by reason of any subsequent change of domicile of the person making the same. (24 & 25 Vict. c. 114, § 3.)

No British subject dying in a foreign country with which a convention has been made is to be deemed to have acquired a domicile unless resident there for one year immediately preceding his or her death, and unless he shall also have made and deposited in a public office of such foreign country a declaration

(*a*) *Browning* v. *Budd*, 6 Moo., P. C. C., 435.
(*b*) *Frere* v. *Peacock*, 1 Rob., 442; 11 Jur., 247.
(*c*) *Waring* v. *Waring*, 6 Moo., P. C. C., 341; *Creagh* v. *Blood*, 2 J. & Lat., 509.

in writing of his or her intention to become domiciled there. (24 & 25 Vict. c. 121, § 1.)

No subject of any such foreign country dying in Great Britain or Ireland is to be deemed to have acquired a domicile therein, unless a resident for one year immediately preceding his death, and unless he shall have signed and deposited with the Secretary of State a declaration of his desire to be domiciled here. (24 & 25 Vict. c. 121, § 2.) But this does not apply to foreigners who have obtained letters of naturalisation.

Wills duly made in England will not be invalidated by reason of the Testator dying abroad.

If an Englishman who resides in France, and has acquired a *de facto* domicile there, but has property in England, dies intestate as to such property, it will be distributed according to the law of France (*a*).

Probate of Will relating to Foreign Property.

A Will which is limited to property in a foreign country is not entitled to probate in England (*b*).

Revocation of, and Cancelling, a Will.

A Will may be revoked at any time during the life of the Testator, in various ways—for instance :—

(i) By the marriage of the Testator, whether man or woman ; (ii) by burning, tearing off the signature, or otherwise destroying the Will, by the Testator or some person in his presence and at his request ; (iii) by a subsequent Will, or by any writing executed in the same manner as a Will, and declaring an intention to revoke ; (iv) where a Codicil is added, it is considered as part of the Will : and any part of the Will may be revoked by Codicil, and other parts confirmed. (7 Will. IV. and 1 Vict. c. 26, § 18.)

It should be remembered that the marriage of the Testator subsequent to making a Will *operates to revoke* the Will, though it may be revived by re-execution or by codicil *after* the marriage, even on the same day.

No revoked Will can be revived, otherwise than by the re-execution thereof, or by a Codicil executed and attested in the same manner as a Will. (7 Will. IV. and 1 Vict. c. 26, § 22.

Forms of Wills.

It is not requisite to the validity of a Will that it should assume any particular form, or be couched in any technical

(*a*) *Hamilton* v. *Dallas*, 45 L. J. Ch., 15.
(*b*) In re *Cood*, 36 L. J. Prob., 129.

language. It is sufficient if the instrument convey the intention of the Testator, provided it contain a proper attestation and be duly signed, acknowledged, and witnessed.

The following concise precedents may be found useful:—

Will giving all Testator's Property, Real and Personal, to One Person.

This is the last Will and Testament of me, James Morgan, of Swansea, in the County of Glamorgan, Butcher. I give, devise, and bequeath all my real and personal estate of every description unto my wife Jane Morgan [*or son or daughter or other person, as the case may be*] absolutely. And I appoint my said wife [*son or daughter, &c., as the case may be*] sole executrix of this my Will, and revoke all previous Wills by me at any time heretofore made, and declare this writing to be my last Will and Testament. In witness whereof, I hereunto set my hand this —— day of ——, in the year of our Lord One thousand eight hundred and ——.

JAMES MORGAN.

Signed by the said James Morgan, the Testator, in the presence of us, present at the same time, who in his presence and in the presence of each other subscribe our names as Witnesses.

C. R. of, &c. (Farmer).
D. B. of, &c. (Baker).

Will giving Furniture and Legacy to Wife, House to Wife for Life, then to be Sold for benefit of Children.

This is the last Will and Testament of me, J. B., of, &c. I appoint C. D. and E. F., of, &c., Trustees and Executors hereof. And I give and bequeath to my Wife Elizabeth, all my household furniture, plate, linen, china, and chattels of every description for her own use absolutely. Also I give and bequeath unto my said wife a legacy or sum of —— pounds to be paid to her as soon after my decease as conveniently may be. And I give and devise all that my freehold messuage or tenement in which I now reside, with the garden, outbuildings, and appurtenances thereunto belonging, situate at —— aforesaid, unto my said Trustees, upon trust to permit my said wife to hold and occupy the same rent free during her life; and after her decease I direct my said Trustees or the survivor of them to sell and dispose of the said messuage and premises by public auction or private contract for the best price that can be obtained for the same, and to invest the money arising therefrom in their names in the public stocks or funds of Great Britain, for the benefit of my children in manner hereinafter mentioned. And as to all the rest and residue of my property of whatever description, I direct my said Trustees to get in and invest the same in their names in the public stocks or funds of Great Britain, and to pay and apply the interest and dividends arising therefrom from time to time into the proper hands of my said wife during her life, her receipt alone to be a sufficient discharge for the same. And from and after the decease of my said wife I direct my said Trustees for the time being to stand possessed of the said principal monies and the interest and dividends arising therefrom, and also of the said monies arising from the sale of my said messuage and premises: To hold the same in equal shares and proportions: Upon trust to pay and apply the said interest and dividends for the maintenance, education, and support of all and every my children, until they attain the age of twenty-one

years or marry. And upon trust to pay to each child on his or her attaining the age of twenty-one years or marrying, his or her share of the said principal monies and accumulations. And I hereby exonerate every Trustee under this my Will from losses occurring without his own wilful default, and authorise him to retain and allow to his Co-trustees or Co-trustee all expenses incidental to the trusteeship under this my Will. And I hereby revoke all previous Wills by me at any time heretofore made, and declare this writing to be my last Will and Testament. In witness, &c. [*See continuation and attestation clause*, p. 482.]

Will directing Trustees to get in Personal Estate for benefit of Children, and devising Real Estate to Eldest Son.

I, A. B., of, &c., do hereby revoke all Wills, Codicils, and other testamentary dispositions heretofore made by me, and do declare this to be my last Will and Testament. I give and bequeath all my personal estate and effects whatsoever and wheresoever (except such parts thereof as at my decease may be vested in me upon any trusts, or by way of mortgage), unto C. D., of, &c., and E. F., of, &c. [*Trustees*], their Executors, Administrators, and Assigns, upon trust to sell such part of my personal estate as shall consist of leasehold lands or tenements, by public auction or private contract, and to call in and convert into money the remainder of my personal estate. And I declare that my said Trustees shall, by and out of the monies to arise from such sale, calling in, and conversion into money, and the money of which I shall be possessed at my death, pay my just debts, funeral and testamentary expenses: and the residue of my said monies shall be in trust for my son John [*or daughter or other person, as the case may be*], for his absolute use and benefit. But in case my said son John shall die under the age of twenty-one years, then I declare that the said residuary monies shall be in trust for my sister Jane [*or other person, as the case may be*], for her absolute use and benefit, independently and exclusively of her present or any future husband, her receipt alone, notwithstanding coverture, to be a sufficient discharge for the same respectively. And I give and devise all my messuages, lands, and hereditaments situate at ——, in the County of ——, and all other my real estate whatsoever, unto my son George, to hold to him, my said son George, his heirs and assigns for ever. In witness, &c. [*See continuation and attestation clause*, p. 482.]

Bequest of a Leasehold House (to form part of Will or Codicil).

I give and bequeath all that my leasehold house and premises known as No. —, —— Street, in the City of London, with the garden and appurtenances thereto belonging, or usually enjoyed therewith, to my son J. B., he paying the rent, and performing the lessee's covenants in respect of the said leasehold premises.

Bequest of Railway Shares (to form part of Will or Codicil).

I give and bequeath to A. B., of, &c., as a specific legacy, my fifty shares, numbered 101 to 150, both inclusive, in the —— Railway Company.

Bequest of a Gold Watch (to form part of Will or Codicil).

I give and bequeath my gold watch, with the chain, guard, and appendages, to my brother ——, for his own use.

Bequest of Copyright and Books (to form part of Will or Codicil).

I give and bequeath to my wife Julia, all that the copyright of and in a certain book or work, known as "The Royal Mansion," together with the exclusive right of printing and publishing the same, and any future editions thereof. I also give and bequeath unto my said wife all the steel plates, wooden blocks, and steel and wood engravings relating to and used or intended to be used in the printing and publishing of the said work, and also all the unsold copies of the said work and printed engravings relating thereto, belonging to me at my decease

Bequest of an Annuity (to form part of Will or Codicil).

I give and bequeath to A. B., of, &c., an annuity of —— pounds to be paid to him during his life, free from legacy duty. And I direct that the said annuity or yearly sum of —— pounds shall be paid to the said A. B. by equal half-yearly payments, the first half-yearly payment thereof to be made on the day six months next after my decease.

Codicil, Revoking the Appointment of one of the Trustees under a Will, and Substituting another in his place.

This is a Codicil to the last Will and Testament of me, A. B., of, &c., which Will bears date the —— day of ——, 18—. Whereas by my said Will I have appointed J. K., of, &c., to be a Trustee thereof, and have devised and bequeathed certain real and personal estates, and given certain powers to the said J. K. and L. M., as Trustees, and appointed them Executors of my said Will, and bequeathed to them a Legacy of —— pounds apiece. Now I hereby revoke my said Will, so far as the said J. K. is an object thereof, and substitute N. O., of, &c., in his place, and declare that my said Will shall take effect in the same manner as if the name of the said N. O. had been originally inserted throughout the said Will instead of the name of the said J. K. But I confirm my said Will in all other respects. In witness whereof I hereunto set my hand this —— day of ——, in the year of our Lord One thousand eight hundred and——"

A. B.

Signed by the said A. B., the Testator, as a Codicil to his Will in presence of us, present at the same time, who in his presence and in the presence of each other subscribe our names as Witnesses.

C. D., of, &c. (Surgeon).
E. F., of, &c. (Grocer).

Codicil, Revoking a Legacy to one Person, and giving it to another.

I, A. B., of, &c., do make and declare this to be a Codicil to my last Will, which Will bears date the —— day of ——, 18--. Whereas I have in and by my said Will given and bequeathed unto D. W. a Legacy or sum of five thousand pounds Now I do hereby revoke my said Will so far as it relates to the said Legacy to the said D. W. And I do hereby give and bequeath unto R. N., of, &c., a Legacy or sum of five thousand pounds for his own absolute use, to be paid to him the said R. N. out of my personal estate within six months next after my decease. And in all other respects I confirm my said Will. In witness, &c. [*Conclude (with attestation clause) as above.*]

Signing and Witnessing a Will or Codicil.

The Will must be signed by the Testator at the foot or end thereof in the presence of two Witnesses. Both the Witnesses must then sign their names, with their places of abode and callings, at the foot of the attestation clause. They must sign in the presence of the Testator, and in the presence of each other (7 Wm. IV. & 1 Vict. c. 26, § 9, explained by 15 & 16 Vict. c. 24).

If there are any interlineations, erasures, or alterations in any part of the Will or Codicil, the Testator should sign his name or initials in the margin opposite such interlineation, &c.; and this must also be done in presence of the Witnesses, who should also sign their names or initials as attesting the alteration or interlineations. The whole of the signing must be one transaction, and done by the parties without quitting each other's presence. And the attesting Witnesses must actually see the signature of the Testator at the time he acknowledges it to be his Will.

The Witnesses should be disinterested parties. No person to whom any legacy or devise is made by the Will or Codicil, nor any Executor or Trustee, should be an attesting Witness; nor the wife or husband of any such person; for thereby such legacy or devise is rendered void. But a Legatee under a Will may witness a Codicil, and a legacy may be given by a Codicil to a Witness of a Will.

Gifts and devises to attesting Witnesses are declared by the Wills Act to be utterly null and void (7 Will. IV. and 1 Vict. c. 26, § 15). But such persons so attesting the Will are competent Witnesses to prove the execution of the Will, or the validity or invalidity thereof: and Executors may be Witnesses if they are not also Legatees, in which latter case they will lose their legacies. And a creditor of the Testator attesting the Will is also a competent Witness (§ 16).

A Witness to a Will need not be a person of full age; a youth or a girl, if of sufficient age and intelligence to understand the nature of the duty required, is a competent Witness.

No alteration whatever should be made in any part of a Will or Codicil after signature. If any alteration is required, it should be done by a Codicil, which will require to be signed and witnessed in the same manner as a Will.

Wills of Soldiers and Sailors.

Soldiers in actual military service, and mariners at sea, may make *nuncupative* Wills (*i.e.*, verbally declared in presence of witnesses), and dispose of their goods, wages, and other per-

sonal chattels, without writing, or any of those solemnities required in other cases. (7 Will. IV. & 1 Vict. c. 26, § 11.)

Wills of Seamen and Marines of the Royal Navy.

By an Act of 1865 (28 & 29 Vict. c. 72), a Will made by a seaman or marine, previously to entering the service, will not be valid so as to pass wages, or other money or effects, belonging to the testator, in charge of the Admiralty; but the relatives or representatives will be entitled to the property as if no Will had been made.

By the same Act, Wills of seamen and marines, made whilst serving, or after they have ceased to serve, in order to be valid for the purpose of passing wages, prize money, &c., in charge of the Admiralty, must be in writing, attested by two witnesses, in the manner already directed; and if made on board one of Her Majesty's ships, then one of the attesting witnesses must be a commissioned officer, chaplain, or warrant or subordinate officer. If the Will is made elsewhere than on board ship, one of the two witnesses may be either such commissioned officer, &c., or the governor, agent, physician, surgeon, or chaplain of a naval hospital at home or abroad, or a justice of the peace, clergyman, consular officer, officer of customs, or notary public.

By an Act of 1897 (60 Vict. c. 15), in the case of a seaman or marine dying after 3rd June, 1897, the provisions of the Act of 1865 cease to apply to a Will made after the seaman or marine has ceased to serve; and it is provided that, in case of a Will made elsewhere than on board ship, one of the two witnesses may be a solicitor or (in Scotland) a law agent.

Wills of Prisoners of War.

These are valid if attested by one witness only, provided such witness be a commissioned officer or chaplain belonging to the naval, marine, or military force, or a warrant or subordinate officer of the navy, or a notary public. (28 & 29 Vict. c. 72.)

Naval, Military, or Civil Servants dying without a Will.

On the death of any person being, or having been, an officer, seaman, or marine, the amount (if any) to the credit of the deceased in the books of the Admiralty, in respect of sale of effects, arrears of pay, wages, prize money, bounty money, grants, or other allowances in the nature thereof, or other money payable by the Admiralty, shall be disposed of to the relatives or representatives of such deceased person according to the provisions of the Navy and Marines (Property of Deceased) Act, 1865 (28 & 29 Vict. c. 111).

On the death of any person in either the Military or Civil

Service who may be entitled to any pay or allowance under £100, the Treasury may direct payment to the relatives entitled thereto, without requiring the production of Letters of Administration. (31 & 32 Vict. c. 90.)

Construction of Wills.

A Will has no operation until the death of the Testator.

Every Will is to be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the Testator, unless a contrary intention shall appear by the Will. (7 Will IV. and 1 Vict. c. 26, § 24.)

The Will of a Testator extends to all real and personal estate to which the Testator may be entitled at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his Will. (7 Will. IV. and 1 Vict. c. 26, § 3.)

Where real estate is, by Will, ordered to be sold, it becomes personalty; and will go accordingly (*a*).

[As to the "real representative" constituted by the Land Transfer Act, 1897, see *ante*, p. 424.]

Money directed to be laid out in land, whether by Will, settlement, contract, or otherwise, will be considered as real property, and before the passing of 3 & 4 Will. IV. c. 104, would not have been liable, as other real assets, to the payment of simple contract debts, but now it will be liable.

Where the ancestor has covenanted to lay out a sum of money in land, to be settled upon himself for life, remainder to his wife for her life, remainder to the issue of the marriage; if, on the death of the ancestor, the wife or any issue be living, although they may afterwards die, the heir can call upon the personal representatives for the money (*b*).

Deciphering a Will.

In deciding whether words obliterated in a Will are apparent, it is allowable to use magnifying glasses or an artificial arrangement of light, but not to resort to any physical interference with the document. Where paper had been pasted by a Testator over certain words in a Will, and these words could be read if the Will was placed against a window pane, and the light concentrated on the part to be read, it was held that the words deciphered should be admitted to probate (*c*).

(*a*) *Fletcher* v. *Ashburner*, 1 White & T., L. C. Eq. (6th ed.), 968.
(*b*) *Kettleby* v. *Atwood*, 1 Vern., 298, 471.
(*c*) *Per* the President (Sir F. Jeune), in *Finch* v. *Combe*, (1894) P. 191.

Gifts by Dying Persons.

A *donatio mortis causâ* is a gift which is not to take effect until the death of the donor, or of a third party. It resembles a legacy in some respects, because it is *revocable*, and is without recovery if the donor survive the donee (*a*). Delivery of the thing given is necessary to complete a *donatio mortis causâ* (*b*), and evidence of the clearest and most unequivocal character is requisite to support it (*c*).

There are two kinds of *donationes mortis causâ*:—(i) That depending on death shortly; (ii) that depending on a condition defeating the gift, *e.g.*, "I give it you on condition you restore it me if I return from abroad or battle," or "if I recover from my present illness." It must be given by the donor in contemplation of the conceived approach or risk of death. The gift must be intended to take effect *only* after the donor's decease. An absolute and irrevocable gift is *not* a good *donatio mortis causâ*. A gift of a bill of exchange is a good *donatio mortis causâ* (*d*). But a gift of a cheque of the donor upon his banker is not a good *donatio mortis causâ*, because it can only be made effectual during the donor's lifetime (*e*), and a cheque ought always to be cashed in the donor's lifetime.

A lady, during the night in which she died, signed and handed to a Trustee of a charity, established by herself, a cheque for £600, for the use of the charity. The lady died before the morning, so that the cheque could not possibly be cashed before her death. It was held that there was no *donatio mortis causâ*, and that the £600 belonged, not to the charity, but to the residuary personal estate of the deceased (*f*).

A *donatio mortis causâ* may be made subject to a trust. It is subject to debts on a deficiency of assets.

Heir-looms.

These are personal chattels which go by special custom to the heir-at-law of the real estate, and not to the executors or administrators of the last owners. Sometimes family portraits and furniture, plate, and other chattels, are left by will to descend as heir-looms; and when so, the person entitled to the personal estate cannot claim them: they descend to the heir-at-law or person entitled to the real estate.

(*a*) *Smith* v. *Cason*, 1 P. Wms., 406.
(*b*) *Ward* v. *Turner*, 1 White & T., L. C. Eq. (6th ed.), 1058.
(*c*) *Cosnahan* v. *Grice*, 15 Moo., P. C., 215.
(*d*) *Austin* v. *Mead*, 50 L. J. Ch. D., 30.
(*e*) *Tate* v. *Hilbert*, 2 Ves., Jun., 111.
(*f*) *Hewitt* v. *Kay*, 37 L. J. Ch., 633.

SECTION II.—THE PROVING OF WILLS.

Proving Wills.

Probates of Wills, as well as Letters of Administration to the effects of deceased persons (as to which see next page, under "Intestacy"), are now granted in the Probate Court, in connection with which there is a Principal Registry at Somerset House, besides District Registries scattered throughout England and Wales (generally in the chief town of every county), presided over by District Registrars, who have power to grant probate and letters of administration in the case of persons having had permanent abode within the respective districts at the time of death.

The Wills of deceased persons who have been resident in London, or in other parts of England or Wales, not included in any of the districts, must be proved in the Chief Registry at Somerset House. And notwithstanding the apportionment of districts, the Will of any person dying in any part of England or Wales, may, if desired, be proved at Somerset House.

By the Finance Act, 1894, the Executors are also required (unless the deceased died on or before 1st August, 1894) to specify *all the property* in respect of which Estate Duty is payable upon the death of the deceased, whether or not as Executors they are accountable for the duty thereon (see *post*, p. 670).

At the Principal Registry at Somerset House, there is a Personal Application Department, where executors or representatives of deceased persons are afforded all information and assistance necessary to enable them to obtain probate of a will or letters of administration without employing a solicitor.

Depository for the Wills and Codicils of Living Persons.

A depository for the safe custody of Wills and Codicils of living persons has been provided at Somerset House. Wills and Codicils enclosed in sealed envelopes are received by the Registrars at the Principal or any District Registry, and placed in, or forwarded to, the depository upon compliance with the prescribed regulations, and payment of a fee of 12*s.* 6*d.*

Instructions how to proceed may be obtained on application at the Principal Registry.

Instructions to Persons going to read Wills at Somerset House.

On going to the Wills Office for the purpose of reading a Will, the only fee payable is *one shilling*, for which you receive a Probate Stamp, and on taking such to one of the officials there, and stating the name of the party deceased, whose Will

you wish to peruse, he will give you a ticket, and direct you to another official, who will introduce you to the alphabetical indexes of names, arranged separately for each year. If you know the year in which the Testator died, such knowledge will materially facilitate your search, and lighten your toils, among the thousands of Smiths, Joneses, Browns, Robinsons, Taylors, and such-like names. As soon as you have found the name required, and are satisfied from the Christian name, the county in which the Testator lived, the date, and other circumstances, that it is the one you are in search of, take the index to one of the officers, and a faithful and legible copy of the Will written on parchment will be brought you; and you may then read it; but you must not copy any part of it except the names and addresses of the Executors, and the date and private number of the Will in the index.

If you require a copy, you can have one for a very few shillings, according to the length.

SECTION III.—INTESTACY.

Personal Estate of Intestates, Letters of Administration, &c.

If a person possessed of personal property die intestate—that is, *without a Will*—Letters of Administration will be granted on application to the Registrar or District Registrar (as the case may be) of the Probate Court. The Administrator to whom the grant is made (generally a near relative of the deceased) then becomes responsible for the distribution of the intestate's effects.

When subjects of foreign States die in Her Majesty's dominions, and there is no person to administer to their estates, the Consuls of such foreign States may administer.

After payment by the Administrator (appointed as above) of the debts owing by the deceased, the residue or surplus must be distributed, after the expiration of one full year from the death of the intestate, as follows (*a*)—subject, however, where the intestate leaves a widow and no issue, to the provisions of the Intestates' Estates Act, 1890 (see *post*, p. 492):—

(*a*) Black., Comm., 516; Statutes of Distribution, 22 & 23 Ch. II. c. 10, and 29 Car. II. c. 30.

Distribution of Personal Estate of a Person Dying without a Will.

If the Intestate dies, leaving—	*His personal representatives take as follows:—*
Wife and child, or children	One-third to wife, rest to child or children; and if no child or children living, then to their representatives (*a*), except such child or children, not heirs-at-law, who had estate by settlement of intestate in his lifetime equal to other shares.
Wife only	Half to wife, rest to next of kin in equal degrees to intestate, or their legal representative.
No wife or child	All to next of kin and to their legal representatives.
Child, children, or representatives of them	All to him, her, or them.
Children by two wives	Equally to all.
If no child, children, or representatives of them	All to next of kin in equal degree to intestate.
Child and grandchild	Half to child, half to grandchild, who takes by representation.
Husband	Whole to him.
Father, and brother or sister	Whole to father.
Mother, and brother or sister	Whole to them equally.
Wife, mother, brothers, sisters, and nieces	Half to wife, residue to mother, brothers, sisters, and nieces.
Wife, mother, nephews, and nieces	Two-fourths to wife, one-fourth to mother, and one-fourth to nephews and nieces.
Wife, brothers, or sisters, and mother	Half to wife, half to brothers or sisters and mother.
Mother only	The whole to her.
Wife and mother	Half to wife, half to mother.
Brother or sister of whole blood, and brother and sister of half blood	Equally to both.
Posthumous brother or sister, and mother	Equally to both.
Posthumous brother or sister and brother or sister born in lifetime of father	Equally to both.
Father's father and mother's mother	Equally to both.
Uncle or aunt's children and brother or sister's grandchildren	Equally to all.
Grandmother, and uncle or aunt	All to grandmother.
Two aunts, nephew and niece	Equally to all.
Uncle, and deceased uncle's child	All to uncle.
Uncle by mother's side, and deceased uncle or aunt's child	All to uncle.

(*a*) That is, their lineal descendants.

Nephew by brother, and nephew by half sister	Equally *per capita* (*a*).
Brother or sister's nephews and nieces	Where nephews and nieces taking *per stirpes* (*b*).
Nephew by deceased brother, and nephews and nieces by deceased sister	Each in equal shares, *per capita*, and not *per stirpes*.
Brother and grandfather	Whole to brother.
Brother's grandson, and brother or sister's daughter	Whole to daughter.
Brother and two aunts	Whole to brother.
Brother and wife	Half to brother, half to wife.
Mother and brother	Equally (*c*).
Wife, mother, and children of a deceased brother or sister	Half to wife, a fourth to mother, and a fourth, *per stirpes*, to deceased brother or sister's children (*d*).
Wife, brother, or sister, and children of a deceased brother or sister	Half to wife, a fourth to brother or sister, *per capita*, one-fourth to deceased brother or sister's children, *per stirpes*.
Brother or sister, and children of a deceased brother or sister	Half to brother or sister, *per capita*, half to children of deceased brother or sister, *per stirpes*.
Grandfather and brother	All to brother (*e*).

Posthumous children take estates or other property as if born in their father's lifetime. (10 & 11 Will. III. c. 16.)

Intestates' Estates Act, 1890.

By this Act, it is provided that the real and personal estates of every man who dies intestate after 1st September, 1890, leaving a widow *but no issue*, shall, in all cases where the net value of such real and personal estates does not exceed £500, belong to his widow absolutely and exclusively (§ 1).

Where the net value of the real and personal estates exceed £500, the widow shall be entitled to £500 absolutely and ex-

(*a*) That is, where the claimant takes in his *own right*, and not as representative of another; as, if the next of kin be three brothers of the intestate, the effects are divided into three equal parts, one to each.

(*b*) That is, *as representatives;* as, if the deceased has three brothers, A, B, and C, and at his death one of them (say A) be dead, leaving children, and B and C be living; the effects shall be divided into three equal parts, of which B and C take one each *per capita*, and the third part shall be divided among the children of A, who take his share, *per stirpes*, as his representatives standing in his place.

(*c*) *Keilway* v. *Keilway*, 2 P. Wms., 34; 1 Str., 710.

(*d*) *Stanley* v. *Stanley*, 1 Atk., 458. (*e*) *Evelyn* v. *Evelyn*, 3 Atk., 762.

clusively, and shall have a charge upon the whole estates for that amount, with interest from the date of her husband's death at four per cent. per annum until payment. As between the real and personal representatives of the intestate, such charge is to be borne and paid in proportion to the values of the real and personal estates respectively (§§ 2, 3).

The provision thus made for the widow is to be in addition and without prejudice to her interest and share in the residue of her husband's estate after payment of the £500 (§ 4).

Where a widow had died without taking out administration to her husband's estate, which, as the husband left no issue and the estate was less than £500 in value, belonged exclusively to her, the Court granted administration of the husband's estate to the widow's executor, under § 73 of the Court of Probate Act, 1857 (*a*).

Advances made to Son during Father's Lifetime.

Payments made by a father in placing out or apprenticing his son, or in purchasing him a commission in the army, or in discharging his son's debts, are in the nature of "advancements" within the meaning of the Statute of Distributions (*b*), and the amounts so paid must be brought into hotchpot by the son before he is entitled to a distributive share in the estate of his father, upon the death of the latter intestate (*c*).

Poor Persons dying without a Will.

The officials of the Probate Registry at Somerset House (Personal Application Department) will assist the representatives of persons of small means who have died intestate, to fill up the papers requisite for a grant of letters of administration; and where the widow or children of a person who has died intestate, leaving effects less than £100 in value, reside more than three miles from the Probate Registry, the widow or any of the children may apply to the Registrar of the County Court in their district, who is to fill up the papers for them and obtain the desired letters of administration from the Probate Registry, to be delivered to the applicant. The fees payable to the Registrar (besides any stamp duty) are 5s. for property under £20, and if over £20, then 5s., and 1s. for every £10. (36 & 37 Vict. c. 52; 38 & 39 Vict. c. 27.)

(*a*) *In the goods of Bryant*, L. R. (1896), P. 159.
(*b*) 22 & 23 Ch. II. c. 10, § 5.
(*c*) *Boyd* v. *Boyd*, 36 L. J. Ch., 877.

SECTION IV.—EXECUTORS AND ADMINISTRATORS.

Duties of an Executor.

An Executor must bury the deceased in a manner suitable to the estate he left behind him; unless there are special directions contained in the Will as to the funeral. Funeral expenses are allowed previous to all other debts and charges; but the Executor must not be extravagant (*a*).

He must prove the Will of the deceased, and make an inventory (*b*) of all the deceased's goods and chattels; and for this purpose he may employ a valuer. He must collect all debts due to the deceased, and take proceedings for the recovery of those refused to be paid. He must pay the just debts owing by the deceased, according to the degrees established by law.

When the debts are all paid, then the legacies may be paid; but if any of the Legatees die before the Testator, such legacies lapse and sink into the "residue" of the Testator's personal estate. (See under "Lapsed or Void Legacies," p. 497.) If there is not enough to pay legacies and annuities in full, they are reduced rateably.

Contracts made by the Testator.

An Executor is in general liable, as such, upon all contracts made by the Testator in his lifetime, and for breaches before or after the death (*c*). But an Action cannot be sustained against an Executor for the non-performance by the Testator of an act strictly personal, as for the breach of a promise to marry (*d*). Nor upon contracts of agency and for personal services (unless for past breaches); such contracts being, in general, revoked by death (*e*).

An Executor or Administrator may sue upon all personal contracts made with the Testator, in respect of the damages accrued to the personal estate from the breach of them, and whether the breach arose before or after the Testator's death (*f*). But as to contracts relating to the *real* estate and which run with the land, they pass with the reversion to the heir or devisee if the reversion be freehold, and to the Executor where the reversion is a chattel interest in the land (*g*).

If a Testator appoint a person indebted to him to be one

(*a*) 1 Williams, Exors. (8th ed.), 972.
(*b*) *Ibid.*, 977. (*c*) *Wilson* v. *Wigg*, 10 East, 313.
(*d*) *Chamberlain* v. *Williamson*, 2 M. & S., 408.
(*e*) *Werner* v. *Humphreys*, 2 M. & G., 853; *Siboni* v. *Kirkman*, 1 M. & W., 423, per *Parke*, B.
(*f*) 1 Wms., Saund., 217. (*g*) Williams, Exors. (8th ed.), 656, *et seq.*

of his Executors, the appointment will operate *at law* as a release of the debt, but *not in equity*. There is no remedy *at law* for a debt due from an Executor, but *in equity* the Executor is converted into a Trustee of the debt for the parties interested in the estate (*a*).

An Executor who has been duly appointed such by the Will of the deceased, if also a creditor of the deceased, may retain his own debt out of the assets, in preference to all other debts of the same degree.

Moneys Raised by Executors or Administrators.

Where Executors or Administrators borrow money in their capacities as such, the lender will have no claim against the goods or estate of the Testator or Intestate; for such contracts create a mere personal liability on the part of the Executor or Administrator, and do not bind the property of the Testator or Intestate (*b*). But slight expressions in the Will will authorise them to make a valid charge.

Delay in taking the accounts of an executorship is not necessarily sufficient negligence whereby to charge an Executor with interest on the balance retained in his hands (*c*).

Actions against Executors or Administrators.

An action of trespass may be maintained against the executors or administrators of a person deceased for any wrong done by him in his lifetime in respect of the real or personal property of another person, if the injury was committed within six months before such person's death, and provided the action be brought within six months after such executors or administrators have taken upon themselves the administration of the estate of the deceased. (3 & 4 Will. IV. c. 42, § 2.)

Directions and Trusts of a Will.

If there are any special directions in the Will, the Executor must be careful to carry out the wishes and intentions of the Testator; if any difficult trusts, he can at any time apply to the Chancery Division (see *post*, p. 503) for directions how to act. The costs of such application will, in all proper cases, be defrayed out of the estate. Special directions are generally given in the Will as to the real estate; but if it is to be sold, the money realised will be paid into the Executor's hands to be applied according to the directions of the Will.

[As to the "real representative" constituted by the Land Transfer Act, 1897, see *ante*, p. 424.]

(*a*) 2 Sp., 296. (*b*) *Farhall* v. *Farhall*, 41 L. J. Ch., 146.
(*c*) *Blogg* v. *Johnson*, 36 L. J. Ch., 859.

Administration of Assets: Payment of Testator's Debts.

The personal estate of the Testator is the primary fund for payment of his debts, unless it be exempted by express words in the Will, or manifest intention by the Testator. Neither a charge upon land nor a direction to sell, nor the creation of a term for payment of debts, will exempt the personal estate. Nor will a devise of real estate "*upon the condition* of the Devisee paying the Testator's debts." But where the personalty has been bequeathed, not as a residue, but as a whole, and the debts and funeral expenses have been charged upon the real estate, the real estate has been held the *primary* fund for their payment (*a*).

Express words are required to exempt the personal estate from its primary liability. It must not only be proved that the realty is *charged* with the payment of them, but also that the personalty is *discharged* (*a*).

Real estate of deceased persons is now liable to debts generally, if the personal estate be insufficient (3 & 4 Will. IV. c. 104).

An Executor is authorised to pay or allow any debt or claim on any evidence that he thinks reasonably sufficient, and may compromise, compound, abandon, or otherwise settle, any debt, account, or claim relating to the Testator's estate.

Receipts and Discharges by Executors and Trustees.

There is a distinction between Executors and Trustees joining in receipts. A *Trustee* must generally join for the sake of conformity, and does *not*, by so doing, assume any power over the trust fund. But an *Executor*, as it is not generally necessary for him to join (for one Executor is competent to give a receipt), by interfering in the transaction unnecessarily, is considered as assuming a power over the fund, and therefore answerable for the application (*b*).

Legacies and Devises of Real and Personal Estate.

A Testator gave several legacies, and ordered his real and personal estate to be sold, his debts and legacies to be paid out of the proceeds arising from the sale, and the residue thereof he gave to certain Legatees in the proportion of their legacies. Two of the Residuary Legatees died during the lifetime of the Testator: it was held as to those shares that they lapsed, and so far as they were constituted of *personal estate*, should go to

(*a*) *Duke of Ancaster* v. *Mayer*, 1 W. & T., L. C. Eq. (6th ed.), 723.
(*b*) *Brice* v. *Stokes*, 2 Tud., L. C. (3rd ed.), 785.

the next of kin, and so far as they were constituted of *real estate*, to the heir-at-law (*a*).

Where a Testator directs real estate to be sold, and the produce to be applied for a purpose which wholly or partially fails, the undisposed-of beneficial interest will go to his *heir-at-law*, and not to his next of kin, although the land may have actually been converted into money (*a*).

If A devise real estate to B upon trust to pay £1000 to C, such sum is considered as part of the real estate; and the personal estate *will not*, even upon a deficiency of the real estate, be liable to the payment of it; and should the Testator himself sell the estate out of which the sum is to be paid, the legacy will be adeemed (*b*).

A residuary devise of land is specific as well since as before the Wills Act (7 Will. IV. and 1 Vict. c. 26): consequently, devised estates specifically mentioned in the Will are subject, equally with residuary devised estates, to the payment of debts which the personal estate is insufficient to satisfy.

[As to the "real representative" constituted by the Land Transfer Act, 1897, see *ante*, p. 424.]

When a legacy is given by a father to a child, though the legacy be payable at a future day, the child has an immediate right to the interest of the money. But if the Testator were a stranger to the child, it would be otherwise (*c*).

Lapsed or Void Legacies.

Lapsed or void legacies, so far as they arise from the sale of *real* estate, will go to the *heir-at-law*, and *not* to the residuary legatee. But where a legacy out of a fund arising from sale of land is given upon a contingency which does not arise, then it goes to the residuary legatee, and not to the heir-at-law.

If a Testator devise lands for purposes illegal, or which altogether fail, the heir-at-law takes them as undisposed of.

A legacy will lapse by the death of the legatee in the Testator's lifetime, although given to the Legatee, "his executors, administrators, and assigns" (*d*). But a gift to A's Executor or Administrator is good.

Unless a contrary intention appear by the Will, a residuary devise will include such real estate or interest therein as shall be comprised in any lapsed or void devise. (7 Will. IV. & 1 Vict. c. 26, § 25.)

(*a*) *Ackroyd* v. *Smithson*, 1 White & T., L. C. Eq. (6th ed.), 1027.
(*b*) *Duke of Ancaster* v. *Mayer*, 1 White & T., L. C. Eq., 723.
(*c*) 2 Rop., Leg. (4th ed.), 1257, 1270.
(*d*) *Elliott* v. *Davenport*, 1 P. Wms., 83.

Under the provisions of the Wills Act, 1837, where any person, being a child or other issue of the Testator, to whom any real or personal estate shall be bequeathed for any interest not determinable at or before the death of such person, shall die in the Testator's lifetime leaving issue living at the Testator's decease, such bequest shall not lapse, but take effect as if the death of such person had happened immediately after the death of the Testator, unless a contrary intention shall appear by the Will. (7 Will. IV. & 1 Vict. c. 26, § 33.)

The effect of this provision is curious. If the Legatee had died immediately after the Testator, leaving a Will, the estate bequeathed to him would have passed under his Will. It has been decided, therefore, that the Will of the Legatee shall, after his death, operate on the estate bequeathed to him in the same manner as if he had been living. If he die intestate, the property goes to his heir or next of kin, as the case may be. This provision has been held to apply to a testamentary appointment under a general power of appointment, but not to a testamentary appointment under a power to appoint amongst the Testator's children; and it does not extend to gifts to children or issue as a class and not individually (*a*).

Legacies, how Recoverable.

No Action will lie at common law to recover legacies unless the Executor has assented (*b*) to such legacies, because the estate may be insufficient, and "a man must be just before he is generous" (*c*). If payment of a legacy be withheld, the Legatee may sue in equity, and he may proceed in the County Courts in cases where the Testator's estate does not exceed £500. (51 & 52 Vict. c. 43.)

As to legacies payable at a future day, whether contingent or otherwise, Courts of Equity will compel the Executor to give security, or will order the fund to be paid into Court (*d*).

Bequests to Illegitimate Children.

Illegitimate children, born at the time of the making of the Will, may be objects of a devise or bequest, by any description which will identify them (*e*): therefore illegitimate children may take under a Will by any name or description which they have acquired by reputation at the time of the making of the Will. And in the case of a gift to the illegitimate children of a man

(*a*) Williams, Personal Propy. (12th ed.).
(*b*) *Williams* v. *Lee*, 3 Atk., 223.
(*c*) 2 Black., Comm., 512; Story, § 591.
(*d*) Story, § 103.
(*e*) *Metham* v. *Duke of Devonshire*, 1 P. W., 529.

or of a woman, or of one by the other, it is simply necessary to prove that the objects in question had, at the date of the Will, acquired the reputation of being such children. It is not the *fact* (for that the law will not inquire into), but the *reputation of the fact*, which entitles them (*a*). But a bequest by a Testator or Testatrix to his or her illegitimate children by a particular person is good, as well to a child born after as before the date of the Will, if the child obtain the reputation of being such before the death of the Testator (*b*).

"Children" means lawful children. Illegitimate children are not deemed objects of a gift to "children" or "issue" of any other degree, unless a distinct intention to that effect be manifest upon the face of the Will; and if, by possibility, *legitimate* children could have taken as a class under such a gift, illegitimate children *cannot;* although children both legitimate and illegitimate may take concurrently under a description which upon the face of it, or by necessary implication, includes the latter. And future legitimate children may take with existing illegitimate children (*c*).

It will be seen that in framing a Will great care is needed if it is wished to provide for illegitimate children. The best course is for a testator to *mention by name* the illegitimate children he desires to benefit if they are in existence at the date of the Will; and if he desires to benefit illegitimate children who may be born after the date of the Will, but before his death, he should declare in express terms that he intends all children of a particular woman (not "all my children"), whether illegitimate or legitimate, to take as members of the class mentioned in the will (*d*).

Difficulties in Carrying out a Will.

If an Executor finds the language of the Will under which he acts difficult of construction, he can protect himself by commencing a suit to get the Will construed by the Court. If there should be more than one claimant to a specific bequest, he can pay the amount into Court, and let the parties concerned fight for its ultimate possession.

(*a*) 2 Jarm., Wills (4th ed.), 217.

(*b*) In re *Goodwin's Trusts*, 43 L. J. Ch., 258; *Occleston* v. *Fullalove*, same, 297.

(*c*) *Hill* v. *Crook*, 42 L. J. Ch., 702.

(*d*) Cf. the decisions in *Hill v. Crook*, 42 L. J. R. Ch. 702; L. R. 6 H. L. 265; *Dorin* v. *Dorrin*, 45 L. J. R. Ch. 652; L. R. 7 H. L. 568; and *Ouleston* v. *Fullalove*, 43 L. J. R. Ch. 297; L. R. 9 Ch. 147.

SECTION V.—TRUSTS AND TRUSTEES.

Trustees and their Duties.

As a general rule, all persons, male and female, and whether married, single, or under 21, may be Trustees. It is not, however, advisable to appoint an infant as sole Trustee, if there is any probability of his having to act before he attains 21, particularly if the trust relates to real estate. In the latter case, however, the Court would appoint someone else to act in his place during minority; and on attaining 21 he may elect to enter the trust (*a*).

It is an old rule in equity, that where a Trustee acts by properly chosen agents, either by necessity or conformably to the common usage of mankind, he is not to be made answerable for losses incurred; but where he has to exercise discretion he cannot shelter himself behind other persons' advice, but must intelligently exercise his own judgment (*b*).

As to the enactments in recent years for the guidance and protection of Trustees, see *post*, pp. 503—508.

Purchase of Trust Property by a Trustee.

A Trustee cannot purchase any part of the trust property—whether real or personal estate—for himself; nor can he purchase *as agent* for another person. Any purchase by a

(*a*) See *In re Skelmerdine*, 33 L. J. Ch., 474; *In re Cant*, 10 Ves., 554.

(*b*) A well-known writer has summed up the "duties" of Trustees as follows:—"The *first* duty of a Trustee is to make himself acquainted with the terms of his trust; his *second* duty is always to bear those terms in mind; his *third* duty is never to depart from them; his *fourth* duty is to take as much care of the trust property as (being a prudent man of business) he is accustomed to care of his own; his *fifth* duty is, in all investments, and particularly in the case of investments on mortgage of real or leasehold estate, to observe to the letter both the provisions of the trust deed or will and the requirements of Parliament [see *post*, pp. 505-508]; his *sixth* duty is to give the persons beneficially interested in the trust complete information as to the state of the trust funds, and otherwise whenever required so to do, and to furnish such persons with accounts; his *seventh* duty is not to make a penny piece of personal profit out of the trust business, unless a professional man specially authorised so to do; his *eighth* duty is to co-operate with his co-trustees in a friendly and reasonable spirit, and to consult him or them about all matters connected with the trust, and to retire (on being paid costs, charges, and expenses) whenever requested so to do by the parties interested; and *ninthly and lastly*, whenever any question of difficulty actually arises as to the extent of his powers or the nature of his duty, to take the opinion of a judge in chambers by way of summons." See *The Duties and Liabilities of Trustees*, by Augustine Birrell, Q.C., M.P. (London: Macmillans, 1896), a small volume wherein these several "duties" are explained and illustrated.

Trustee *for sale* from his *cestui que trust*, although he may have given an adequate price and gained no advantage, may be set aside at the option of the *cestui que trust*, unless the connection between them appears to have been first completely dissolved, and unless all knowledge of the value of the property which may have been acquired by the Trustee has been communicated to his *cestui que trust* (*a*).

A mortgagee with power of sale, being, in fact, a Trustee for sale, cannot, except by the express authority of the mortgagor, purchase the mortgaged estate (*a*). Nor can a Trustee take a lease from himself (*b*).

A Trustee who has disclaimed, without ever acting in the trust, may become a purchaser, as also a mere Trustee to preserve contingent remainders. A Trustee for infants cannot purchase the trust-estate, unless by leave of the Court.

Trustee Banking Trust Money and Mixing it with his own.

If a Trustee mix trust money with his own private money at his bankers, he will be charged with interest, and will be held liable to the *cestui que trust* for any loss sustained by the banker's insolvency (*c*).

If Trustees or Executors deposit trust money in a bank and the bank fail, they are not liable for the loss, if deposited for a temporary purpose in the ordinary discharge of their duty. But if, upon the bank's failing, it be found that the money has been placed to the Trustee's or Executor's own credit, or mixed with his own moneys, he will be liable for the loss (*d*).

A Trustee must not keep money indefinitely on deposit at a bank, for this is an unlawful investment; and if a Trustee keep in his own possession trust moneys which ought to have been invested, though he make no profit by so doing, he will be charged interest (*e*).

Where Trustees, who were tradesmen, paid part of the trust moneys to their general account at their bankers, it was held that the *cestui que trust* might at his option charge them either with interest or a proportionate share of the profits of the trade. The rule being (see *post*, p. 502) that the Trustee shall account for all the gain he has made, where it is difficult

(*a*) *Hall* v. *Hallett*, 1 Cox, 161; *Sanderson* v. *Walker*, 13 Ves., 601; *Fox* v. *Mackreth*, 1 White & T., L. C. Eq., 104.

(*b*) *Rowe* v. *Chichester*, Amb., 715; *Trumper* v. *Trumper*, 8 L. R. Ch. App., 870.

(*c*) Smith, Manual Eq. Jur. (12th ed.), 218.

(*d*) *Townley* v. *Sherborne*, 2 Tud., L. C., 778 (*in notis*).

(*e*) *Johnson* v. *Prendergast*, 28 Beav., 480; *Blogg* v. *Johnson*, 2 L. R. Ch. 228.

to ascertain what profit has really been made, interest will be charged in lieu (*a*).

Allowances to Trustees or Executors.

Neither an Attorney, who is an Executor or Trustee, *nor* his *partner*, will (unless the Will specially permits it) be allowed to charge a *cestui que trust*, except for expenses out of pocket. But costs of their town agent, in a cause, will be allowed; and under peculiar circumstances an inquiry may be directed to give some remuneration to a solicitor for his loss of time and trouble (*b*).

Trustees may contract with their *cestui que trust* to receive some compensation for acting, or to make professional charges. Any such contract, however, must be perfectly fair, or it cannot be enforced (*b*).

In a case where an Executor had no legacy, and at first refused to act because of great anticipated trouble, but afterwards agreed with the residuary legatees, in consideration of 100 guineas, to act in the executorship, but he died before completion of the trust, it was held that his personal representatives could not recover any part of the 100 guineas (*c*).

Though Trustees and Executors will not, in the absence of a contract, be allowed any remuneration for their trouble and loss of time, they may, in special cases, employ agents, whose expenses will be allowed out of the estate (*d*).

Trustees will be allowed expenses out of pocket, whether provided for by the deed or will, or not; also travelling expenses, fees to Court, costs of a proper law-suit, &c. (*d*).

A Testator gave annuities of five guineas each to his Trustees for their trouble, and appointed them Executors. Amongst other property the Testator had 50 houses in London, let at weekly rents; the Trustees employed an agent to collect the rents, and on passing their accounts the Court allowed the salary which the Trustees had paid him (*e*).

Profits made of Trust Money cannot be retained by Trustee.

It is an old and well-established rule of equity that a Trustee, or an Executor, who uses trust money in trade, must account for the profits made by that use of the trust money.

In a case in which the captain of a ship had 800 dollars

(*a*) *Docker* v. *Somes*, 2 My. & K., 655.
(*b*) *Robinson* v. *Pett*, 2 White & T., L. C. Eq. (6th ed.), 214; *Ayliffe* v. *Murray*, 2 Atk., 58. (*c*) *Gould* v. *Fleetwood*, Mich., 1732.
(*d*) *Robinson* v. *Pett*, 2 White & T., L. C. Eq. (6th ed.), 214.
(*e*) *Wilkinson* v. *Wilkinson*, 2 S. & S., 237.

aboard, which he intended to invest in trade, but died on the voyage: the mate becoming captain, invested the dollars in trade, and made great gain. On his return to England, the Executrix of the first captain sued for an account. The Defendant was held to be a Trustee, and liable to account for the whole profits; but to recompense him for his care and trouble in trading, he was allowed a salary (*a*).

Upon the same principle a Trustee will not be allowed to have the sporting over the trust estate (*b*).

Judicial Advice obtainable by Trustees.

Under the provisions of an Act of 1859 (22 & 23 Vict. c. 35, § 39), any Trustee, Executor, or Administrator may apply by petition to a Judge of the Chancery Division of the High Court, or by summons on a written statement to any such Judge at Chambers, for the opinion, advice, or direction of such Judge on any question respecting the management of the trust property, or the assets of any testator or intestate, such application to be served upon the persons interested, as the Court may think fit.

Any Trustee who acts on the opinion, advice, or direction so given will be absolved from responsibility and be deemed to have discharged his duty; but it is expressly provided that no Trustee shall be indemnified who shall use any deceit or misrepresentation in applying to the Judge.

The petition or statement must be signed by counsel, and the Judge may require counsel's attendance either in Chambers or in Court (23 & 24 Vict. c. 38, § 9).

Punishment of Fraudulent Trustees.

If any Trustee shall, with intent to defraud, convert or appropriate the property of which he is Trustee to or for his own use or purposes, or shall dispose of or destroy such property, he will be guilty of a misdemeanor, and be liable to be kept in penal servitude for life, or for any term not less than three years, or to imprisonment for not more than two years, with or without hard labour (24 & 25 Vict. c. 96, § 80).

In a case where it appeared that a Trustee had paid £1,409 of trust money to his own bankers, and had then drawn out the whole of it except £28, and out of those moneys paid a private debt of his own of £150, criminal proceedings (under a previous statute for which 24 & 25 Vict. c. 96 is now substituted) were sanctioned by the Court (*c*). But the usual

(*a*) *Brown* v. *Litton*, 1 P. Wms., 140.
(*b*) *Robinson* v. *Pett*, 2 White & T., L. C. Eq. (6th ed.), 214.
(*c*) *Wadham* v. *Rigg*, 1 O. & S., 216.

practice in case of a defaulting Trustee is to proceed summarily by way of attachment (see *ante*, p. 38).

Judicial Trustees Act, 1896.

By this Act (59 & 60 Vict. c. 35), power was given to the High Court, and to any County Court Judge to whom jurisdiction under the Act may be assigned, in any case where application is made by a person desiring to create a trust, or by any Trustee or beneficiary of an existing trust, to appoint any fit and proper person nominated for the purpose to be what is called a Judicial Trustee, to act in the administration of the trust either jointly with another person or as sole trustee; and if sufficient cause be shown in place of the existing trustees.

A Trustee so appointed may be paid for his services out of the trust funds; and once in every year the accounts of every trust of which a Judicial Trustee has been appointed are to be audited, and a report thereon made to the Court by the prescribed persons.

Charitable trusts are not within the Act, nor does the Act extend to Scotland or Ireland.

Relief of Trustee in case of Breach of Trust.

The same Act (59 & 60 Vict. c. 35, § 3) provided that if it appears to the Court that a Trustee, whether appointed under the Act or not, is personally liable for any breach of trust (committed either before or after the passing of the Act), but has acted honestly and reasonably, and ought fairly to be excused, the Court may relieve the Trustee either wholly or partly from personal liability in respect thereof.

A Trustee cannot relieve himself from all responsibility for an intended breach of trust by retiring from the trust he has undertaken to perform. For instance, where a Trustee who refuses to commit a breach of trust retires from the trust for the purpose of enabling a Trustee who will commit the breach of trust to be appointed, and the new Trustee does in fact commit that specific breach of trust, then the old Trustee as well as the new Trustee will be liable (*a*).

But the old Trustees will only be liable for a breach of trust which was expressly contemplated when the trust property was handed over to the new Trustees, and not for a different breach which the new Trustees may commit (*b*). "It will not suffice to prove that the former Trustees rendered easy or even

(*a*) *Palairet* v. *Carew*, 32 Beav., 568; *Webster* v. *De Hunt*, 9 W. R., 918.
(*b*) *Clark* v. *Hoskins*, 27 L. J. Ch. 561.

intended a breach of trust, if it was not in fact committed. They must be proved to be guilty as accessories before the fact of the impropriety actually perpetrated" (*a*). Thus, in a recent case, where it was sought to make retiring Trustees liable for a breach of trust committed after their retirement, it was found, as a matter of fact, that they never contemplated the breach of trust committed by the new Trustees, and, notwithstanding that they had retired in order to get rid of the importunity of their *cestui que trusts*, they were absolved from liability for the breaches of trust committed by the new trustees (*b*).

Investments by Trustees.

It is a long-standing piece of advice to Trustees that they must be very careful how they invest trust funds. Unless the Will or settlement under which they act contained special powers, they were in former years practically confined to Government and a few other securities, and to mortgages on freehold land; but a wider choice of stocks is now given them by the Trust Investment Act (see below).

Before investing on mortgage they ought not only to make all inquiries which a prudent and reasonable man would make, but they should obtain a report of a trustworthy and independent surveyor; and it is now provided by the Trustee Act, 1893 (56 & 57 Vict. c. 53, § 8), that a Trustee lending money on a lawful security shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that he acted upon the report and advice of an able practical surveyor or valuer instructed and employed independently of any owner of the property, and that the amount of the loan did not exceed two-thirds of the value of the property as stated in the report.

The same Act also provides (§ 8) that a Trustee lending money on the security of leaseholds shall not be chargeable with breach of trust only upon the ground that he dispensed with investigation of the lessor's title; and that a Trustee is not to be chargeable with breach of trust only upon the ground that when buying, or lending upon, any property he accepted a short title, if in the opinion of the Court the title accepted by him were such as a person acting with prudence and caution would have accepted.

Further, where a trustee improperly advances trust money on

(*a*) *Per* Kekewich, J., in his judgment in case cited in next note.
(*b*) *Head* v. *Gould*, L. R. (1898) 2 Ch. 250.

a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorised investment for the smaller sum, and the Trustee shall only be liable to make good the sum advanced in excess thereof with interest (§ 9).

Trust Investment Act, 1889.

By this enactment (52 & 53 Vict. c. 32), Trustees (including executors or administrators) were empowered to make a selection, where specific directions are not given by the trust, from a wider list of securities than was formerly allowed. The Act was technically repealed by the Trustee Act, 1893 (56 & 57 Vict. c. 53), but its provisions were in substance re-enacted by the same statute. (The Act does not apply to Scotland.)

It is now lawful for a Trustee, unless expressly forbidden by the instrument creating the trust, and subject to any consent required thereby, to invest trust funds as follows:—

(A)—In any of the Parliamentary stocks or public funds or Government securities of the United Kingdom:

(B)—On real or heritable securities in Great Britain or Ireland:

(C)—In stock of the Bank of England or Bank of Ireland:

(D)—In India Three-and-a-half per cent. stock and India Three per cent. stock, or in any other capital stock which may at any time hereafter be issued by the Secretary of State in Council of India, under authority of Act of Parliament, and charged on the revenues of India:

(E)—In any securities the interest of which is for the time being guaranteed by Parliament:

(F)—In Consolidated stock created by the Metropolitan Board of Works or the London County Council, or in debenture stock created by the Receiver for the Metropolitan Police:

(G)—In the debenture or rentcharge or guaranteed or preference stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three per centum per annum on its ordinary stock:

(H)—In the stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity or for a term of not less than 200 years at a fixed rental to any such railway company as is mentioned in sub-section (*g*) either alone or jointly with any other railway company:

(I)—In the debenture stock of any railway company in

India the interest on which is paid or guaranteed by the Secretary of State in Council of India:

(J)—In the "B" annuities of the Eastern Bengal, the East Indian and the Scinde Punjaub and Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway; also in deferred annuities comprised in the register of holders of annuity class D and annuities comprised in the register of annuitants class C of the East Indian Railway Co.:

(K)—In the stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed:

(L)—In the debenture or guaranteed or preference stock of any company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than five pounds per centum on its ordinary stock:

(M)—In nominal or inscribed stock of the corporation of any municipal borough having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or by any county council, under the authority of any Act of Parliament or Provisional Order:

(N)—In nominal or inscribed stock issued or to be issued by any Commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that during each of the ten years last past before the date of investment the rates levied by such Commissioners shall not have exceeded eighty per centum of the amount authorised by law to be levied:

(O)—In any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control or subject to the order of the High Court.

A Trustee may invest in any of the securities mentioned or referred to in the foregoing list, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value; but he may not under the Powers of the Act purchase at a price exceeding its redemption value any stock mentioned

or referred to in sub-sections (G), (I), (K), (L), and (M), which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such stock as is mentioned in the same sub-sections which is liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per centum above par or such other fixed rate. Until redemption a Trustee may retain any redeemable stock which may have been purchased in accordance with the powers of the Act (52 & 53 Vict. c. 32; 56 & 57 Vict. c. 53).

A Trustee will not be liable for breach of trust *by reason only* of his continuing to hold an investment which has ceased to be an investment authorised by the instrument of trust or by the general law (57 Vict. c. 10, § 4).

Trustee Acts, 1888 *and* 1893.

By an Act of 1888 (51 & 52 Vict. c. 59), provision was made tending to lessen the personal responsibilities of Trustees (including executors and administrators) who act in good faith. This Act (in all its provisions save one) was repealed by an Act of 1893 (56 & 57 Vict. c. 53), but its provisions were substantially re-enacted by the same statute.

That Act provides that a Trustee may appoint a solicitor or a banker to be his agent for the receipt of trust money in certain cases. It also protects him against liability arising out of depreciatory conditions on sales, or out of losses resulting from loans of the trust funds in certain cases (see *ante*, under "Investments by Trustees"); but the provision as to sales only applies to sales made after 24th December, 1888. It also limits the liability of Trustees in cases of breaches of trust committed at the instance of or with the consent of the beneficiary; it empowers Trustees to insure trust property to the extent of three-fourths of the value, and to pay the premiums out of trust income without obtaining the consent of the beneficiary; and it enlarges and simplifies the powers of the Court, and of Trustees themselves, for the appointment of new Trustees and other matters.

Restriction of Actions for Breach of Trust.

By § 8 of the Trustee Act, 1888 (which was *not* repealed by the Act of 1893), Trustees are enabled to plead the Statutes of Limitation as in cases of debt (see *ante*, p. 9) to any claim founded on breach of trust, except in the case of fraud to which the Trustee was party or privy, or of a claim to recover trust property which is still retained by the Trustee or has been received and converted to his own use (51 & 52 Vict. c. 59, § 8).

PART XII.

PUBLIC HEALTH AND GOOD ORDER.

SECTION I.—INSANITARY HOUSES AND AREAS.

(i) URBAN AND RURAL SANITARY AUTHORITIES.

Inspection of Districts.

EVERY sanitary authority has the power under the Public Health Act, 1875 (38 & 39 Vict. c. 55), of taking summary proceedings for the closing of houses unfit for human habitation, and for the abatement of overcrowding in any house in their district; and the Act in express terms declares that it shall be the duty of every sanitary authority to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances exist calling for abatement.

Proceedings for Abatement of Nuisances.

The word "nuisance" includes any premises in such a state as to be a "nuisance or injurious to health," and "any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates."

If after notice from the sanitary authority a nuisance is not abated, or if abated, is likely to recur on the same premises, it is the duty of the authority to institute proceedings before justices. The justices are empowered by their order to require the person on whom the order is made "to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order, and to do any works necessary for that purpose."

Houses Unfit for Habitation.

If in the judgment of the justices the nuisance is such as to render the house unfit for human habitation, they may prohibit its being used for that purpose until it is rendered fit for habitation, and in that case the house may not be let or inhabited until the justices have declared it habitable. A person not obeying an order for abatement is liable for every such offence to a penalty not exceeding 10s. per day during the default, and a person knowingly or wilfully acting contrary to an order of prohibition is liable to a penalty not exceeding 20s. per day during such contrary action. And in the case of such default the authority may enter the premises to which the order relates, and abate the nuisance, charging the cost to the person on whom the order is made.

Houses may be closed for Overcrowding.

When two convictions in respect of the overcrowding of the same premises have taken place within a period of three months, whether the persons convicted were or were not the same, the justices may order the closing of the house for such time as they may deem necessary.

(ii) METROPOLITAN SANITARY AUTHORITIES.

Inspection of Districts.

Since their first constitution in 1855, the metropolitan vestries and district boards have had the power of taking summary proceedings for the closing of houses unfit for human habitation, and for the abatement of overcrowding. Section 134 of the Metropolis Management Act (1855) made every vestry and district board under that Act the local authority to execute the Nuisances Removal Act (1855); and § 20 of the Sanitary Act (1866) expressly declared that it should be the duty of the local authority to make from time to time inspection of their district, with a view to ascertain what nuisances exist calling for abatement, and to enforce the provisions of the Act of 1855, and of the other Nuisances Removal Acts. Similar powers and duties have devolved on the Commissioners of Sewers of the City of London.

Proceedings for Abatement of Nuisances.

The powers of metropolitan local authorities in this behalf are substantially the same as those of urban and rural sanitary authorities for the same purpose which are recounted above.

Housing of the Working Classes Act, 1890.

Part I. of this Act (53 & 54 Vict. c. 70) deals with "Unhealthy Areas," and provides that where an official representation is made to a local authority that within a certain area either (i) any houses, courts, or alleys are unfit for human habitation, or (ii) the narrowness, closeness, and bad arrangement of the streets and houses or groups of houses within such area, or the want of light, air, ventilation, or proper conveniences, or any other sanitary defects, are dangerous or injurious to the health of the inhabitants either of the buildings in the said area or of the neighbouring buildings; and that the evils thus set forth cannot be effectually remedied otherwise than by an improvement scheme for the re-arrangement and reconstruction of the streets and houses within such area, or of some of such streets or houses, the local authority, if satisfied of the truth of such representation and of the sufficiency of their resources, shall make a scheme for the improvement of such area, or a number of such areas (§ 4).

An official representation shall mean a representation made to the local authority by the Medical Officer of Health of that authority, and in London made either by such officer or any Medical Officer of Health in London.

A Medical Officer of Health shall make such representation whenever he sees cause to make the same; and if two or more Justices of the Peace acting within his district, or twelve or more persons liable to be rated to the local rate, complain to him of the unhealthiness of any area within such district, it shall be his duty forthwith to inspect such area, and to make an official representation stating the facts of the case, and whether in his opinion the said area or any part thereof is an unhealthy area (§ 5).

No such scheme of a local authority is to be carried into execution until it has been confirmed (after a public inquiry) by the Secretary of State, if it is a scheme for any part of London, or by the Local Government Board if it is a scheme for any other place, and finally sanctioned by Parliament.

Part II. of the Act deals with "Buildings Unfit for Habitation," and makes it the duty of the Medical Officer of Health of every district to represent to the local authority of that district any dwelling-house which appears to him to be in a state so dangerous or injurious to health as to be unfit for human habitation (§ 30).

If in any district any four or more householders living in or near to any street complain in writing to the Medical Officer

of Health that any dwelling-house in or near that street is in a condition so dangerous or injurious to health as to be unfit for human habitation, he shall forthwith inspect the same, and transmit to the local authority the said complaint, together with his opinion thereon (§ 31).

Upon such representation the local authority are empowered to obtain a closing order in respect of the dwelling-house; and if after such order the house is not rendered by the owner fit for human habitation they are empowered to order the demolition of the house. Any person aggrieved by an order of the local authority may appeal to Quarter Sessions.

Part II. of the Act also deals with "Obstructive Buildings," and provides that if a Medical Officer of Health finds that any building within his district is so situate that it (i) stops ventilation, or otherwise renders such other buildings unfit for human habitation or dangerous or injurious to health, or (ii) prevents proper measures from being carried into effect for remedying a nuisance injurious to health, he shall represent to the local authority the particulars relating to such first-mentioned (or obstructive) building.

Any four or more inhabitant householders of a district may make to the local authority a similar representation (§ 38).

The local authority on receiving any such representation, and after hearing thereon the owner of the lands on which the obstructive building stands, may make an order directing that such obstructive building shall be pulled down, subject to appeal by the owner to Quarter Sessions (§ 38).

The Act materially amends the law relating to assessment of compensation on the basis of rental for houses taken for improvement purposes under the Act, by providing that allowance is to be made where rents have been forced up by overcrowding, or maintained in spite of the neglect of repairs and sanitation (§§ 21, 41).

Part III. of the Act deals with "Working Class Lodging Houses" (which term is to include "separate houses or cottages for the working classes, whether containing one or several tenements"), and empowers rural sanitary authorities, with the assent of the County Council, to provide such accommodation for the housing of the working classes in a specified area in which such accommodation is required and is not likely to be otherwise provided (§ 53).

SECTION II.—OFFENCES AGAINST PUBLIC HEALTH.

Public Health (London) Act, 1891.

This Act (54 & 55 Vict. c. 76), which came into operation on 1st January, 1892, consolidates (with some amendments) the law relating to public health in the Metropolis as the law on that subject was consolidated, as regards the rest of England and Wales, by the Public Health Act, 1875. It is to be administered in the City of London by the Commissioners of Sewers, and in the rest of the Metropolis by the several local sanitary authorities, under the control, in certain respects, of the London County Council. Particulars of some of the provisions of the Act are given hereunder.

Where the medical officer of health shall certify that "any house or part of a house" is so overcrowded as to be injurious or dangerous to the health of the inmates, even though members of the same family, it will now be the duty of the sanitary authority to take proceedings for the abatement of the nuisance (§ 4).

Where the medical officer of a sanitary authority becomes aware of the employment in a workshop of "any child, young person, or woman," he is to give notice of the fact forthwith to the factory inspector for the district (§ 27).

The Act repeals the obligation imposed by previous Acts on the owner or occupier of a house to sweep and cleanse the adjoining footway and watercourse, and it imposes upon the sanitary authority the duty of keeping the streets (including the footways) properly swept and cleansed (in times of frost and snow, as well as other times), and renders them liable on default to a fine not exceeding £20 (§ 29). It also provides that if a person in the employ of the sanitary authority, or of any contractor, demands from an occupier or his servant any fee or gratuity for removing house refuse, he shall be liable to a fine not exceeding £1 (§ 30).

Every factory, workshop, and workplace, whether erected before or after the commencement of the Act, is to be provided with sufficient and suitable sanitary conveniences, regard being had to the number of persons employed; and where persons of both sexes are employed, separate accommodation is to be provided for each sex, under a penalty not exceeding £20, and of a further fine of £2 for every day after conviction for non-compliance with the Act (§ 38).

The Act empowers a medical officer of health or sanitary

inspector to enter premises and examine articles intended for human food, including any animal which is exposed for sale or deposited for preparation for sale, and any article, whether solid or liquid, which in like manner is exposed for sale, or deposited for preparation for sale; and if any such animal or article appears to be diseased, or unsound, or unfit for the food of man, any person in whose possession the same is found will be liable, upon conviction, to a penalty not exceeding £50 (instead of £20 as heretofore) for every animal or article, or to imprisonment for six months (instead of three as heretofore), with or without hard labour (§ 47).

Where a person who is convicted of an offence under the section shall have been within 12 months previously convicted of a like offence, the Court may order that a notice of the facts be affixed for a period not exceeding 21 days to any premises occupied by him, and may also order him to pay the costs of affixing such notice (§ 47).

Where a water company cuts off the water supply to any dwelling-house, for non-payment of water rate or other cause, they are to give notice of the fact to the sanitary authority within 24 hours. Neglect to give the notice will render them liable to a fine not exceeding £10 (§ 49).

The Act requires every sanitary authority to make bylaws for securing the cleanliness of water tanks and other receptacles for storing water for drinking or domestic purposes or for manufacturing drink for the use of man (§§ 50 and 114).

Where under the Infectious Diseases (Notification) Act, 1889 (*post*, p. 544), a medical officer of health receives a certificate of notification in respect of a child, he is now required to send a copy of the certificate to the head teacher of the school attended by the child, or by any child in the same house, as well as to the Metropolitan Asylum Managers (§ 55).

The Act imposes a fine not exceeding £10 on a person who, knowing himself to be suffering from any dangerous infectious disease, engages in milking, fruit-picking, or any occupation connected with food, or carries on any trade or business in such a manner as to be likely to spread the disease (§ 69).

It is also made unlawful for the owner or driver of a public conveyance knowingly to convey, or for any other person knowingly to place in such conveyance, a person suffering from any dangerous infectious disease, or for a person so suffering to enter any public conveyance. If either of these things is done, the offender will be liable to a fine not exceeding £10. The sanitary authority, when requested by the owner or driver of a public conveyance in which a person suffering from a

dangerous infectious disease has been conveyed, is now required to provide for its disinfection (§ 70).

Public Health Act, 1875.

By this enactment (38 & 39 Vict. c. 55) and other Acts, various penalties (as stated hereunder) have been imposed with the view of punishing or abating offences against public health.

Adulteration of Food and Drugs.

Mixing for sale injurious ingredients with food or drugs. Maximum penalty £50; subsequent offence 6 months' hard labour (38 & 39 Vict. c. 63, §§ 3, 4). But no person is liable to conviction if he shows to the satisfaction of the Court that he did not know that the food or drug sold by him was mixed, &c., and that he could not with reasonable diligence have obtained that knowledge.

Selling to the prejudice of the purchaser any article of food (*a*) or drug not of the nature, substance, and quality demanded. Maximum penalty £20.

But no offence is to be deemed committed (1) where any matters or ingredient not injurious to health have been added because required for the preparation of the article as an article of commerce in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drugs, or to conceal the inferior quality thereof; (2) where the drug or food is a proprietary medicine, or is patented and supplied according to the patent; (3) where the food or drug is compounded as mentioned in the Act; (4) where it is unavoidably mixed with some extraneous matter in the process of collection or preparation (38 & 39 Vict. c. 63, § 6). And no person will be guilty of an offence in selling an article so mixed with any ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure, or to conceal its inferior quality, if it bears a label to the effect that it is mixed (§ 8).

Selling an article of food so altered by abstraction of something from it that its quality, substance, or nature is injuriously affected. Maximum penalty £20 (§ 9).

Refusing to sell to an officer an article of food or any drug exposed for sale which the officer desires to purchase for analysis. Maximum penalty £10 (§ 17).

(*a*) Baking powder not being an "article of food," the sale of it adulterated with 40 per cent. of alum is not an offence under the Act, notwithstanding that alum is injurious to health (*James* v. *Joals* (1894) 1 Q. B. 304).

Forging or uttering, knowing it to be forged, any certificate or writing purporting to contain a warranty. Misdemeanor punishable by two years' imprisonment with hard labour (§ 27).

Wilfully applying to one article of food, &c., a certificate or warranty given in relation to any other article; giving a false warranty in writing; giving a label falsely describing the article sold. Maximum penalty £20 (§ 27).

Refusing to supply an officer desiring to obtain milk for analysis. Maximum penalty £10. (42 & 43 Vict. c. 30 § 4.)

Unwholesome Food.

Exposing for sale for human food any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk which is diseased or unsound or unwholesome or unfit for the food of man. Maximum penalty £20 for each article or parcel, or 3 months' imprisonment without a fine, and a Justice may order the same to be destroyed. (38 & 39 Vict. c. 55, § 117.)

Preventing an officer entering premises to inspect articles of food or obstructing or impeding officer. Maximum penalty £5. (38 & 39 Vict. c. 55, § 118.)

(See also Public Health (London) Act, 1891, *ante*, p. 513.)

Cellars.

Letting for hire, occupying, or knowingly suffering to be occupied for hire, or rent, any cellar contrary to the provisions of the Public Health Act, 1875. Maximum penalty £1 per day after written notice. Any cellar in which any person passes the night is to be deemed occupied as a dwelling. The provisions above referred to include an absolute prohibition against using any vault or underground room built or rebuilt after August 11th, 1875. Cellars then in existence and occupied may only continue to be so used if they fulfil certain conditions. (38 & 39 Vict. c. 55, §§ 71—75.)

Fires.

Wilfully setting chimney on fire. Maximum penalty £5 and offender liable for felony. (10 & 11 Vict. c. 89, § 30.)

Occupier negligently allowing any chimney to catch or be on fire. Maximum penalty 10*s*. (10 & 11 Vict. c. 89, § 31.)

Any person knowingly giving or causing to be given a false alarm of fire to the fire brigade of any town or parish outside the metropolitan area, whether by means of a street fire alarm, statement, message, or otherwise, is liable on summary conviction to a penalty not exceeding £20. (58 & 59 Vict. c. 28.)

Hackney Carriage Drivers.

Plying for hire in an urban district with an unlicensed vehicle, or acting as a driver without having a driver's licence. Maximum penalty £2 and £1 respectively. (10 & 11 Vict. c. 89, §§ 45, 47.)

Highways and Streets.

Erecting any building over any sewer belonging to any urban authority, or causing any vault, arch, or cellar to be newly built or constructed under the carriage way of any street. Maximum penalty £5 and £2 per day and the cost of restoring the ground. (38 & 39 Vict. c. 55, § 36.)

Wilfully displacing or injuring the pavement, stones, materials, fences, posts, or trees in any urban street. Maximum penalty £5, and 5*s.* for every square foot of pavement displaced, together with compensation for injury done to the trees. (38 & 39 Vict. c. 55, § 149.)

Water company or other persons breaking up pavements or streets for the purpose of laying or examining pipes and making default in reinstating and making good road or pavement so disturbed. Maximum penalty £5 and £5 per day. (10 Vict. c. 17, §§ 33, 52, 65.)

Destroying or defacing names or numbers in urban streets. Maximum penalty £2. (10 & 11 Vict. c. 34, § 64.)

Default by occupiers of houses and buildings in urban streets to number their houses after notice to do so from Urban Authority. Maximum penalty £2 and to repay the expense of doing the work. (10 & 11 Vict. c. 34, § 65.) The same penalty for neglecting to renew numbers after notice.

Making default in urban districts as to removing projections; altering doors; as to covering for cellars; as to water shoots; interfering with bars or lights; failing to erect or light fences and rails during building operations; in fencing or removing building materials. Maximum penalties varying from £2 to £4, together with in some cases a daily penalty of £2. (10 & 11 Vict. c. 34, §§ 69—82.)

As to offences "calculated to hinder the convenient user of streets" in urban district, see 10 & 11 Vict. c. 89, §§ 21—29.

Common Lodging-houses.

Breach of bylaws. Maximum penalty £5, and £2 per day. (38 & 39 Vict. c. 55, §§ 80, 90, 183.)

Neglecting to lime-wash walls and ceilings of common lodging-houses in April and October. Maximum penalty £2. (38 & 39 Vict. c. 55, § 82.)

Medical Sanitary Matters.

On neglect of owner or occupier, within 24 hours, to cleanse and disinfect house or articles therein likely to retain infection, after receiving notice, Local Authority shall disinfect and recover expenses in summary manner. (53 & 54 Vict. c. 54, § 5.) The Local Authority is empowered to order the destruction of any bedding or clothing, &c., which have been exposed to infection, paying compensation for the same. (38 & 39 Vict. c. 55, § 121.)

Disobeying or obstructing Justice's order for the removal to a hospital of a person suffering from any dangerous infectious disorder who is without proper lodging or accommodation. Maximum penalty £10. (38 & 39 Vict. c. 55, § 124.)

Person suffering from any dangerous infectious disorder wilfully exposing himself without proper precautions in any street, public place, shop, inn, or public conveyance, in the last-named place without notifying to the owner, conductor, or driver that he is so suffering, or being in charge of a patient so exposing such patient, or giving, lending, selling, transmitting or exposing without previous disinfection, any bedding, clothing, rags, or other things which have been exposed to infection. Maximum penalty £5. (38 & 39 Vict. c. 55, § 126.) [As to notification of infectious diseases, under Act of 1889, see *post*, p. 544.]

Owner or driver of public conveyance neglecting to disinfect the same after conveying infectious patient. Maximum penalty £5. (38 & 39 Vict. c. 55, § 127.)

Knowingly letting for hire any house, room, or part of the house in which any person has been suffering from a dangerous infectious disorder, without having such house, &c., and all articles therein liable to retain infection, disinfected to the satisfaction of a medical practitioner as testified by a certificate. Maximum penalty £20. (38 & 39 Vict. c. 55, § 128.)

Making a false answer to question when letting for hire a house or room as to same having been occupied within 6 weeks by infectious patient. Maximum penalty £20 or 1 month's imprisonment. (38 & 39 Vict. c. 55, § 129.)

Nuisances in Households.

Neglecting after written notice to whitewash, cleanse, or purify any house or part thereof in such a filthy or unwholesome condition as to affect or endanger health. Maximum penalty 10*s.* per day. (38 & 39 Vict. c. 55, § 46.)

Permitting in urban district a nuisance from pigs, from waste or stagnant water, or from overflow of water-closet, &c.

Maximum penalty £2 and 5*s.* per day and expenses incurred in abating nuisance. (38 & 39 Vict. c. 55, § 47.)

Where premises create a nuisance or are injurious to health; pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ash-pit, foul or in bad state; animal improperly kept; foul accumulation or deposit; house dangerously overcrowded; factory or workshop not clean or properly ventilated; trade fireplace or furnace not consuming as far as practicable its smoke; any chimney, not of a dwelling-house, sending forth black smoke. Maximum penalty £5 and all costs incurred. (38 & 39 Vict. c. 55, §§ 91—96.)

Disobedience to Orders of Justices.

Disobeying an order of Justices to comply with requisition of a Local Authority or to abate a nuisance. Maximum penalty 10*s.* per day, or if default wilful £1 per day, together with expenses of doing the work. (38 & 39 Vict. c. 55, § 98.)

Refusing to admit a person bearing Justice's order to inspect premises. Maximum penalty £5. (38 & 39 Vict. c. 55, § 103.)

Scavenging and Removal of Refuse.

Local Authority which has undertaken or contracted for the removal of house refuse from premises on the cleansing of closets, &c., neglecting without reasonable excuse after notice in writing from an occupier to remove refuse or cleanse closet, &c. Maximum penalty 5*s.* for every day during which default continues. (38 & 39 Vict. c. 55, § 43) (*a*).

Owner of stable neglecting to remove manure or other refuse matter after notice, and neglecting periodical removal at such intervals as Urban Authority directs. Maximum penalty £1 per day. (38 & 39 Vict. c. 55, § 50.)

Obstructing the removal, by the Local Authority or contractor, of house refuse proper to be removed. Maximum penalty £5. (38 & 39 Vict. c. 55, § 42.)

Sewers and Drains.

Owner or occupier of premises causing a drain to empty

(*a*) It is only "house" refuse, and not "trade" refuse, which local authorities are bound to remove. In the case of *St. Martin's Vestry* v. *Gordon* (L. R. (1891) 1 Q. B. 61), it was decided that the ashes or clinkers produced by a furnace at an hotel were house and not trade refuse; and (following this case) it was held (Clerkenwell Police Court, October 26, 1897) in *Holborn Board of Works* v. *Cooper* (see *Law Journal*, Nov. 6, 1897), that clinkers from a furnace used to warm the premises of a firm of blouse manufacturers were house refuse only. But in *London and Provincial Steam Laundry Company* v. *Willesden Local Board* (L. R. (1892) 2 Q. B. 271) clinkers from a steam laundry were held to be trade refuse.

into a sewer of a Local Authority without giving notice, and without complying with the regulations of the Authority. Maximum penalty £20, and the Local Authority may close any communication wrongfully made, and may recover the expenses for doing so. (38 & 39 Vict. c. 55, § 21.)

Building or rebuilding any house in an urban district without effectual drainage as defined in the Act. Maximum penalty £50. (38 & 39 Vict. c. 55, § 25.)

Building or rebuilding any house without a sufficient water-closet, earth-closet, or privy, and a proper ash-pit. Maximum penalty £20. (38 & 39 Vict. c. 55, § 35.)

Using any house as a factory or building in which persons of both sexes are employed at one time in any manufacture, trade, or business, without a sufficient number of water-closets, &c., for each sex. Maximum penalty, £20, and £2 per day during default. (38 & 39 Vict. c. 55, § 38.)

Neglecting to repair any drain, water-closet, &c., found on examination by officers of Local Authority to need repair, and in respect of which the Local Authority serves a notice on the owner or occupier. Maximum penalty 10*s.* per day during default, and Local Authority may execute works and recover the expenses from the owner. (38 & 39 Vict. c. 55, § 41.)

Slaughter Houses.

Using a new slaughter house without a licence; an old slaughter house not registered; a slaughter house when the licence is suspended. Maximum penalty £5, and a daily penalty where the offence continues. (10 & 11 Vict. c. 34, §§ 126, 127, 130.)

Neglecting to exhibit words "Licensed Slaughter House"; having bad meat therein; obstructing an officer desiring to inspect, are severally offences for which penalties are prescribed. (38 & 39 Vict. c. 55, § 170; 10 & 11 Vict. c. 34, § 131.)

Consumption of Smoke.

Trade fireplace, or furnace, not consuming as far as practicable its smoke. Maximum penalty £5, and 10*s.* per day, or if wilful £1 per day. (38 & 39 Vict. c. 55, §§ 91, 96, 98.)

Locomotive used on railway or highway not consuming as far as practicable its own smoke. Maximum penalty £5 per day. (8 Vict. c. 20, § 114; 31 & 32 Vict. c. 119, § 19; 28 & 29 Vict. c. 83; 43 & 44 Vict. c. 48.)

Pollution of Water.

Bathing in or washing any dog or other animal, or throwing rubbish, dirt, filth, or other noisome things into any stream,

reservoir, or other water-works. Maximum penalty £5, and £1 per day. (10 Vict. c. 17, § 61; 38 & 39 Vict. c. 55, § 57.)

Fertilisers and Feeding Stuffs Act, 1893.

Every person who sells for use as a fertiliser of the soil not less than half a hundredweight of any article manufactured in the United Kingdom or imported from abroad, shall give to the purchaser an invoice stating the name of the article and whether it is an artificially compounded article or not, and what is at least the percentage of the nitrogen, soluble and insoluble phosphates, and potash, if any, contained in the article; and this invoice shall have effect as a warranty (56 & 57 Vict. c. 56, § 1).

Every person who sells for use as food for cattle any article which has been artificially prepared, shall give to the purchaser an invoice stating the name of the article and whether it has been prepared from one or more than one substance or seed, and this invoice shall have effect as a warranty. Where any article sold for use as food for cattle is sold as prepared from any particular substances or seeds, and without any indication that it is mixed with any other substance or seed, there shall be implied a warranty by the seller that it is pure. Any statement by the seller of the percentages of nutritive and other ingredients contained in any article sold for use as food for cattle, made in an invoice or in any circular or advertisement, shall have effect as a warranty (§ 2).

Penalties for breach of duty by seller under the Act—for a first offence, a fine not exceeding £20; and for any subsequent offence, a fine not exceeding £50 (§ 3).

Analysts are to be appointed by County Councils, and special powers are given to purchasers of fertilisers or feeding stuffs to have the same analysed (§§ 4, 5).

Regulation of Bakehouses.

No water-closet, earth-closet, privy, or ash-pit shall be within or communicate with any bakehouse: and any cistern for supplying water to a bakehouse shall be separate and distinct from any cistern for supplying water to a water-closet: and no drain or pipe for carrying off fæcal or sewage matter shall have any opening within the bakehouse. (46 & 47 Vict. c. 53, § 15.)

No place on the same level with a bakehouse, and forming part of the same building, can be used as a sleeping place unless constructed as follows:—(1) Effectually separated from the bakehouse by a partition extending from floor to ceiling; (2) Unless there be an external glazed window of at least

9 superficial feet in area, of which at least 4½ superficial feet are made to open for ventilation. (41 Vict. c. 16, § 35.)

Adulteration of Seeds.

Every person who, with intent to defraud, or to enable another person to defraud, kills, or causes to be killed, or dyed, any seeds, or sells or causes to be sold any killed or dyed seeds, is liable to a penalty not exceeding £5: and for a second offence, not exceeding £50; and the Court may order a notification of such second conviction to be published at the expense of the offender. (32 & 33 Vict. c. 112, § 3.)

The term "to dye seeds" means any process of colouring, dyeing, or sulphur smoking. (41 Vict. c. 17, § 2.)

Poisoned Grain, Seed, or Flesh.

Every person who shall sell or expose for sale any grain, seed, or meal, which has been steeped or dipped in poison, or mixed in any way with poison, will be liable to a penalty not exceeding £10. And a like penalty is incurred for laying, placing, sowing, &c., of the same on any ground or exposed places.

The above penalties do not apply to seeds or grain used *bonâ fide* for agricultural purposes. (26 & 27 Vict. c. 113, §§ 2—4.)

Poisoned flesh is not to be placed in any field, under a penalty of £10. But the occupier of a house may use it for the destruction of vermin in his own house or enclosed premises. (27 & 28 Vict. c. 115, § 2.)

Margarine, or Sham Butter.

"Margarine" means all substances, whether compounds or otherwise, prepared in imitation of butter, and whether mixed with butter or not; and no such substance can now be lawfully sold except under the name of margarine, and under the conditions set forth in the Act. Every person dealing in margarine, who is found guilty of an offence under the Act, shall be liable on conviction for the first offence to a fine of £20, for the second offence to a fine of £50, and for any subsequent offence to a fine of £100. (50 & 51 Vict. c. 29, §§ 3, 4.)

Every package, whether open or closed, and containing margarine, is to be branded or marked "Margarine," and if the margarine be exposed for sale, by retail, there shall be attached to each parcel, and so as to be clearly visible to the purchaser, a label marked "Margarine" in printed capitals; and every person selling margarine by retail, save in a package duly branded or marked, shall deliver the same to the purchaser in a paper wrapper, on which shall be printed in capital letters, not less than ¼ inch square, "Margarine" (§ 6).

Margarine is "exposed for sale" within the meaning of the Act, and requires the prescribed label, although wrapped in paper and invisible to the purchaser at the time (*a*).

Sale of Horseflesh Regulation Act, 1889.

No person shall offer for sale any horseflesh for human food elsewhere than in a shop, stall, or place displaying whether by night or day, when horseflesh is being offered for sale, words indicating that horseflesh is sold there; and no person shall supply horseflesh for human food to any purchaser who has asked to be supplied with meat other than horseflesh. (51 & 52 Vict. c. 11, § 2.)

A medical officer of health or inspector of nuisances may inspect and examine meat believed to be horseflesh, and exposed for sale contrary to the Act, and if such meat appears to him to be horseflesh he may seize and carry it away (§ 3).

On complaint made on oath by a medical officer of health or inspector of nuisances, or other officer of a local authority, any justice may grant a warrant to any such officer to enter any building other than such shop, stall, or place as aforesaid, in which such officer has reason for believing there is kept or concealed any horseflesh intended for sale for human food, and to search for, seize, and carry away any meat that appears to such officer to be such horseflesh (§ 4).

Any person offending against any of the provisions of the Act, shall be liable for every such offence to a penalty not exceeding £20, to be recovered in a summary manner (§ 6).

For the purposes of the Act "horseflesh" includes the flesh of asses and mules, and means horseflesh, cooked or uncooked, alone or mixed with any other substance (§ 1).

Noxious and Offensive Trades.

All works in which the manufacture of alkali, sulphuric acid, or chemical manure, or a manufacture involving other offensive chemical processes (as particularised in the Acts) is carried on, are required to be registered; and the owner must obtain a certificate of registration, the duty upon which, if for alkali works, is £5; for other works, £3. In all such works the best practical means are to be used for preventing the discharge of noxious and offensive gases. (44 & 45 Vict. c. 37; 55 & 56 Vict. c. 30.)

Establishing in an urban district without consent of Local Authority any offensive trade—such as blood-boiling, bone-boiling, tallow-melting, tripe-boiling, &c. Maximum penalty £50 and £2 per day. (38 & 39 Vict. c. 55, § 112.)

(*a*) *Wheat* v. *Brown*, L. R. (1892), 1 Q. B. 418.

SECTION III.—WATER SUPPLY.

Assessment of Water Rates.

Water rates are usually payable on the rateable value of the premises, not on the gross rental. Where the water rate was required to be computed on the annual rack rent or value of the premises, and was to be payable according to the annual value at which assessed to the poor rate, the water company assessed their rate on the gross estimated rental; it was held that they were not entitled to do so, and that the water rate must be assessed on the rateable value, as in the poor rate assessment (*a*). And so also where a water company charged the occupier of a house, of which he was lessee for a long term of years, with water rate on the gross estimated rental of £140, it was held that the assessment must be calculated on the rateable value, which was only £118 (*b*).

It may be presumed now that this is a correct statement of the law generally, unless the water company's special Act contains a specific enactment to the contrary (*c*), but in order to remove all doubts as to London, Parliament has so enacted since these decisions, by passing the Water Rate Definition Act, 1885. (48 & 49 Vict. c. 34.)

Limitation of Powers of Water Companies.

By an Act of 1887 (50 & 51 Vict. c. 21), in any case where the owner and not the occupier is liable to the payment of the water rate for a dwelling-house, no water company shall cut off the supply for non-payment of the rate, but such water rate, with interest at £5 per cent. per annum, shall be a first charge on such dwelling-house, and may be recovered, with costs, from the owner or occupier. Proceedings are not to be taken against the occupier until notice has been given to him to pay the amount due out of the rent. (50 & 51 Vict. c. 21, § 4.)

If the supply be cut off in contravention of the Act, the company will be liable to a penalty, payable to the person aggrieved, not exceeding £5 for each day during which the water shall remain cut off (§ 5).

By an Act of 1897 (60 & 61 Vict. c. 56), applying only to Metropolitan water companies, upon complaint being made by a water consumer or a local authority to the Railway and Canal Commissioners (see *ante*, p. 12), (i) that any such com-

(*a*) *Warrington Water-Works Co.* v. *Longshaw*, 51 L. J. Q. B. D., 498.
(*b*) *Dobbs* v. *Grand Junction Water-Works Co.*, 51 L. J. Q. B. D., 501.
(*c*) As in *Bristol Water-Works Co.* v. *Uren*, 54 L. J. M. C., 97.

pany has failed to perform a statutory duty, or (ii) as to the quantity or quality of the water supplied for domestic use, the Commissioners may make orders redressing such complaint, including in case (ii) the award of damages to the complainant.

The same Act also provides that a local authority may aid any water consumer in obtaining the determination of any question which appears to the local authority to be of interest to water consumers within its district.

Compulsory Water Supply in Rural Districts.

By the Public Health (Water) Act, 1878 (41 & 42 Vict. c. 25), every rural Sanitary Authority must see that every occupied dwelling-house within their district has an available and sufficient supply of wholesome water.

Where it appears that the supply is insufficient, and that a proper supply can be provided at a reasonable cost, the interest upon which, at 5 per cent. per annum would amount to only 2*d.* or 3*d.* per week, the Local Government Board may, on the application of the Local Authority, require the owner, within six months, to provide such supply.

Offences by Consumers of Water.

Removing communication pipes without notice to water company. Permitting cisterns to be out of repair so that the water is wasted. Fraudulently supplying water to persons other than those entitled to take it. Maximum penalty £5. (10 Vict. 17, §§ 51, 55, 58.)

Fraudulently taking water without being entitled to a supply. Maximum penalty £10 and £5. (10 Vict. c. 17, § 59; 26 & 27 Vict. c. 93, § 20.)

Wilfully wasting or misusing water, or wilfully injuring or tampering with a water meter. Maximum penalty £5 in the one case and £2 and the value of the damage in the other case. (26 & 27 Vict. c. 93, § 17; 38 & 39 Vict. c. 55, § 60.)

Occupying a house in a rural district in respect of which no certificate has been issued that there is an available and sufficient supply of wholesome water. Maximum penalty £10. (41 & 42 Vict. c. 25, § 6.)

Using any well, tank, or cistern, public or private, for drinking or domestic purposes, after issue of an order by Justices that it shall be permanently or temporarily closed, or the water used for certain purposes. On default Local Authority may step in and execute necessary works at the expense of the person on whom the original order was made. (38 & 39 Vict. c. 55, § 70.)

SECTION IV.—RIGHTS AND LIABILITIES AS TO NUISANCES.

Liability for Nuisance, how Incurred.

A man may become responsible for a nuisance in various ways: such as erecting and working a tallow furnace, limekiln, tan-pit, pig-sty, privy, smelting-house, dye-house, guano warehouse, noisy forge or workshop, brew-house, glass-works, burning lime or bricks so near the dwelling-house of his neighbour that the smoke, noise, or smell renders it unfit for habitation; or by making a cesspool, the filth of which percolates through the soil, and contaminates the water of his neighbour's well or spring; or by erecting a building which overhangs the house or land of his neighbour; or fixing a spout, or any projection which causes or has a tendency to cause an unnatural quantity of rain-water to fall upon his neighbour's house or land; or by turning or letting impure drainage run into a watercourse or pond and foul the water, or destroy or injure the fish or fishing; or by disturbing a long-established decoy by firing off guns near by; or by stopping or diverting water that used to run to another's mill (*a*).

Remedies for Nuisances.

The remedies for abatement of nuisances are various. For "a public nuisance the proceedings may be by indictment, because the damage is common to all the King's subjects; but if a private person suffer some special or extraordinary damage from a public nuisance beyond that of the rest of the King's subjects, he can bring an Action for damages, as in the case of a ditch dug across a public highway: if a man or his horse suffer an injury by falling therein, the party can have his Action" (*b*).

Actionable Nuisances.

Where the nuisance is not a public or common nuisance it is treated as a *private wrong*, for which a remedy is given by Action at law for damages, in which the party injured may recover satisfaction for the injury sustained, but cannot thereby remove the nuisance. But every continuance of a nuisance is held to be a fresh one (*c*); and therefore a fresh Action will lie, and very exemplary damages will probably be given, if after one verdict against him the Defendant has the hardihood to continue the nuisance. But instead of bringing an Action, a

(*a*) See 3 Black. Comm., 216; Addison, Torts (6th ed.), 271.
(*b*) Co. Litt., 56; 5 Rep., 73.
(*c*) *Thomson* v. *Gibson*, 7 M. & W., 456.

man aggrieved by a nuisance may enter upon the land of another and abate the nuisance himself, and it will be no trespass (*a*). In abating the nuisance reasonable care must be used that no more damage be done than is necessary (*b*).

Preventing Continuance of Nuisance.

Where the object is to prevent the *continuance* of a nuisance, or the like, the remedy will be by injunction.

Where a lessee had covenanted not to do or suffer to be done upon the demised premises any act, matter, or thing which might "be or grow to the annoyance, nuisance, grievance, or damage of the lessor, her heirs or assigns, or the inhabitants of the neighbouring or adjacent houses," it was held that an act which interfered with the reasonable peace of mind of, and pleasurable enjoyment of life by, sensible and reasonable people came within the meaning of "annoyance" or "grievance" in the covenant, and that the use of the premises as a hospital for the treatment of diseases of the throat, nose, ear, skin, and eye, and fistula and other diseases, caused a reasonable apprehension of the risk of infection to the inhabitants of adjacent houses, and was an "annoyance" or "grievance" within the covenant restrainable by injunction (*c*).

Filterings from Drains.

Every occupier is bound to prevent the filth of his drains or cesspools from filtering through the ground into his neighbour's house, land, or well (*d*).

If a landlord erect privies in such a situation that the use of them must necessarily create a nuisance, and the privies are demised to tenants who use them and create a nuisance, the landlord will be responsible for the nuisance (*e*).

Pollution of Streams and Rivers.

Every person who throws dirt and rubbish into a stream, so as to block up a channel or defile the water, is guilty of a nuisance, and may be made responsible in damages (*f*), unless he has gained a prescriptive right to carry on an offensive trade and defile the water (*g*). See also *ante*, p. 416.

By the Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), every person who puts, or causes, or permits to

(*a*) *Batten's Case*, 9 Co. Rep., 54 b; Brooke, Abr., Nuisance, f. 102, b. pl., 33; *Perry* v. *Fitzhowe*, 8 Q. B., 775.
(*b*) *Roberts* v. *Rose*, 3 H. & C., 162.
(*c*) *Tod-Heatley* v. *Benham*, 40 Ch. D., 80; 58 L. J. Ch. 83.
(*d*) *Tenant* v. *Golding*, 1 Salk, 21. (*e*) *R.* v. *Pedley*, 1 A. & E., 822.
(*f*) *Murgatroyd* v. *Robinson*, 7 E. & B., 391.
(*g*) *Bealey* v. *Shaw*, 6 East, 214.

be put, or to fall, or be carried into any stream, so as to interfere with its flow, or to pollute its waters, the solid refuse of any manufactory, manufacturing process, or quarry, or any rubbish, cinders, or waste, or any putrid or solid matter, will be guilty of an offence.

The Act also contains prohibitions against allowing solid or liquid sewage matter to be put, or to flow into any stream of water; and by an amending Act of 1893 (56 & 57 Vict. c. 31), if any sewage matter falls or flows or is carried into any stream after passing through or along a channel vested in a sanitary authority, the sanitary authority shall be deemed to knowingly permit the sewage so to fall, flow, or be carried.

A gas company or manufacturer who suffers refuse products to flow into any stream, or wilfully does any act whereby water is fouled, is liable to a penalty of £200, and £20 per day. (10 Vict. c. 17, §§ 62—64; 38 & 39 Vict. c. 55, § 68.)

Noisy and Noxious Trades.

Buildings erected for carrying on noisy or offensive-smelling trades must be erected in places remote from dwelling-houses, and at such a distance as not to cause nuisance or annoyance to owners and occupiers of adjoining premises. If such buildings be erected and such trades carried on, the persons carrying them on are liable to an Action for damages; unless they can prove a prescriptive right to carry on such trade by 20 years' user and enjoyment (*a*).

Noise and Vibration of Machinery.

Where a nuisance of this kind has existed and been acquiesced in for five years or more, the Court will not interfere by injunction on the ground of increased noise, if it be proved that no change in the machinery or manner of working it has occurred (*b*).

Noises from Adjoining House.

A man is entitled to the comfortable enjoyment of his dwelling-house. Therefore if his neighbour make such a noise as to interfere with that ordinary use and enjoyment, and to cause serious annoyance and disturbance, the owner and occupier of the dwelling-house is entitled to be protected from it; not from the noise arising from the playing of a pianoforte, or of children in a nursery, as such are noises to be reasonably expected from an adjoining house, and must to a reasonable

(*a*) *Elliotson* v. *Fectham*, 2 Bing., N. C., 134.
(*b*) *Gaunt* v. *Finney*, 42 L. J. Ch., 122.

extent be put up with. But noises which materially disturb the comfort of a man's dwelling-house and prevent persons from sleeping at night, if of a permanent nature, are actionable as a nuisance. And therefore, if the ground-floor of a neighbouring house be turned into a stable, or a stable be erected so close to or adjoining a dwelling-house that the stamping by the horses of their feet on the floor disturbs or prevents persons from sleeping at night, such is an actionable nuisance, and will be restrained by injunction (*a*).

Nuisances at Night.

Every person who blows a horn or creates an unusual noise and disturbance in the night-time, in the neighbourhood of a dwelling-house, so as to disturb the repose of the inmates, is guilty of a nuisance; and will be responsible in damages unless he can show some lawful justification for making the noise (*b*).

Nuisance from Crowds, Public Fêtes, Matches, &c.

If a person collect together a crowd of people, whether at night or in the day-time, to the annoyance of his neighbours he will be answerable for a nuisance (*c*).

Where a person gave public fêtes for his own profit in his own grounds in the outskirts of a large town, and such fêtes (although in themselves properly conducted) brought together crowds of disorderly and noisy people, to the annoyance and injury of the occupier of an adjoining residence, an injunction was granted to restrain the continuance of the nuisance (*d*).

Where a person was in the habit of inviting persons into his grounds to shoot pigeons, the effect of which was that idle persons collected near the spot, trod down the grass of the neighbouring meadows, destroyed the fences, and created alarm and disturbance among the women and children in the adjoining thoroughfares; it was held that the Defendant was guilty of a nuisance (*e*).

(*a*) *Broder* v. *Saillard*, 45 L. J. Ch., 414; and see *Ball* v. *Ray*, 8 L. R. Ch., 467.

(*b*) *R.* v. *Smith*, 2 Str., 703. In a case where the business of wholesale newspaper and forwarding agents involved the assembling during the night of a number of horses and carts in the streets immediately adjoining residential chambers, an injunction was applied for to restrain this as a nuisance, and the action was settled by the defendants undertaking so to carry on their business as not to disturb the neighbouring residents (*Marshall and Son's case*, 1896).

(*c*) *R.* v. *Moore*, 3 B. & Adol., 188.

(*d*) *Walker* v. *Brewster*, 37 L. J. Ch., 33.

(*e*) *R.* v. *Moore*, 3 B. & Adol., 188.

SECTION V.—EXPLOSIVES.

Restrictions Regarding Explosives.

By the Explosives Act, 1875 (38 Vict. c. 17), various powers for the control of the manufacture of explosives, and of all trafficking therein, are vested in the Secretary of State and Local and Harbour Authorities, powers of search and inquiry being given.

"Explosive" includes gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and "every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect"; as well as fog-signals, fireworks, fuses, rockets, percussion caps, detonators, and "every adaptation or preparation of an explosive as above defined" (§ 3).

Manufacture and Sale of Gunpowder.

All stores and places for the manufacture and keeping of gunpowder must be licensed, and all premises upon which it is kept must be registered, and the registration must be renewed annually. (38 Vict. c. 17, §§ 4, 5.)

Gunpowder shall not be hawked, sold, or exposed for sale upon any highway, street, public thoroughfare, or public place, under a penalty not exceeding forty shillings, and forfeiture of the gunpowder so hawked or exposed for sale (§ 30).

Gunpowder shall not be sold to any child apparently under the age of 13, under a penalty not exceeding £5 (§ 31).

All gunpowder exceeding one pound in weight, publicly exposed for sale, shall be in a substantial case, bag, canister, or other receptacle made and closed so as to prevent the gunpowder from escaping, and with the word "gunpowder" thereon in conspicuous characters, under a penalty of 40*s.* and forfeiture of the gunpowder (§ 32).

Letting off Fireworks.

Any person throwing, casting, or firing fireworks in or into any highway, street, thoroughfare, or public place, is liable to a penalty of £5. (38 & 39 Vict. c. 17, § 80.)

Explosives inside Buildings.

Whoever introduces gunpowder or explosive materials into a building is in general responsible for damage occasioned thereby (*a*).

(*a*) Addison, Torts (6th ed.), 374.

Petroleum, and other Inflammable Substances.

Dealings in petroleum are subject to stringent restrictions. "Petroleum" includes any rock oil, Rangoon oil, Burmah oil, oil made from petroleum, coal, schist, shale, peat, or other bituminous substance, and any products of petroleum or of any of the above-mentioned oils, giving off an inflammable vapour at a temperature of less than 73° Fahr. (34 & 35 Vict. c. 105, § 3; 42 & 43 Vict. c. 47, § 2.)

It may not be kept except under licence by the Local Authority; but this provision is not to apply to petroleum kept for private use or for sale, provided it be kept in separate glass, earthenware, or metal vessels, each containing not more than a pint, and securely stopped, and the aggregate amount so kept does not exceed 3 gallons. (34 & 35 Vict. c. 105, § 7.)

Any person licensed to keep petroleum may, subject to the enactments for the time being in force with respect to hawkers and pedlars, hawk such petroleum, by himself or his servants, but only under the regulations contained in the Act for precaution against accidents. (44 & 45 Vict. c. 67.)

Petroleum, or any other inflammable liquid, used for the purposes of light locomotives (see *post*, p. 538), can only be kept and used in conformity with special regulations issued by the Secretary of State. (59 & 60 Vict. c. 36, § 5.)

Escape and Explosions of Gas.

The tenants of houses in which gas is used are responsible for the consequences of explosions of gas on the premises, if the stop-cocks by which the supply of gas is regulated are not properly turned, or are negligently left open, by such tenants or their servants, when the gas-lights are not burning; and if by reason of such negligence gas escapes and an explosion occurs whereby the house is injured, the tenant will be responsible for the damage (*a*).

But where they occur through the negligence or carelessness of a gas-fitter, or of a person employed by the landlord or by the gas company, or their servants, such gas-fitter, landlord, or gas company (as the case may be) will in general be liable for the injury, whether to person or property. And so, where a gas-fitter employed to repair a gas-meter in a cellar left the pipes in so unsafe a condition, that on a servant entering the cellar with a candle an explosion occurred; the gas-fitter was held liable for the injuries sustained by the servant (*b*).

(*a*) *Holden* v. *Liverpool Gas Co.*, 3 C. B., 14.
(*b*) *Parry* v. *Smith*, 48 L. J., C. P., D., 731.

SECTION VI.—REGULATION OF HIGHWAYS.

Turnpike Trustees.

These were highway authorities elected in bygone times, under numerous Acts of Parliament. The roads formerly managed by them, but now dis-turnpiked, do not, as a rule, lapse into the condition of local or parish roads, but are regarded usually as important trunk roads, to the repair of which a larger area than a parish or district should contribute.

Hence the introduction of the term "main roads," to the repair of which, under certain circumstances, the county rate is made to contribute. (41 & 42 Vict. c. 77, §§ 13—17.) Main roads are now under the control of County Councils.

Dedication of Ways to the Public.

A way may become a public highway by an express or implied dedication of it to the public by the owner: or by prescription, or by Act of Parliament, or by necessity.

If a man open his land, so that the public pass over it continually, the public, after a user of a few years, acquire a right of way. Therefore, if the owner of the land does not intend to dedicate the way to the public, he should do some act to show that a licence only is intended, as by setting a bar across it, or by stopping it up at least one day in every year (*a*). The mere fact of a gate being kept up is not sufficient.

Every public cartway leading to a market town must be 20 feet wide at the least; every public bridle-way 8 feet at least; and every public foot-way by the side of any cart-way 3 feet at least. (5 & 6 Will. IV. c. 50, § 80.)

If once a road becomes a public highway, it must be repaired at the expense of the parish; but where a highway has been diverted under the Highway Act, the parish or party liable to the repair of the old highway will be liable to the repair of the new one. (5 & 6 Will. IV. c. 50, § 92.)

Improvement of Private Streets.

By an Act of 1892 (55 & 56 Vict. c. 57), Urban Sanitary Authorities are empowered to execute improvements in streets, not being highways, repairable by the inhabitants at large, and to charge the expense thereof on the premises fronting or abutting on the same streets; and they may also recover summarily or by action from the owners of such premises their apportioned amounts of the expense.

(*a*) *Trustees of British Museum* v. *Finnis*, 5 C. & P., 465.

Impassable or Dangerous Highways.

If a highway become impassable or dangerous from being out of repair, whether by the overflowing of a river or any other cause, the public have a right to pass in another line upon adjacent ground, whether it be sown with corn or not (*a*); and it will be no trespass under such circumstances; for the way becomes a highway by necessity.

But a person entitled to the use of a *private way* over the land of another, has no right to deviate from it in consequence of its being impassable, unless it is the duty of the owner of the land to repair the way, and it has become impassable through his default in not repairing (*b*).

Stopping-up and Diverting Highways.

It is provided by Act of Parliament that proceedings for these purposes must either originate with the vestry, or the party wishing to divert a road must give notice to the surveyor of highways, requiring him to call a vestry meeting, and submit his proposal to the vestry. The several steps to be taken require considerable care, for the details are intricate. The order is eventually made by the Justices at quarter sessions. (5 & 6 Will. IV. c. 50, §§ 84—91.) In boroughs the Town Council exercise the functions of the vestry herein, and in rural districts the District Councils (see p. 605).

It was formerly held (*c*) that, in order to obtain authority for diverting an old road, the new one must be both nearer *and* more commodious; that decision was, however, overruled in 1866, and the law now is that, if the proposed highway be nearer *or* more commodious, that will be sufficient (*d*).

Unnecessary highways may be discontinued and declared no longer repairable by the public. (41 & 42 Vict. c. 77, § 24.)

Trees by the Sides of Highways.

If any tree, bush, or shrub be planted on any carriage-way or cart-way, or within 15 feet from the centre thereof, the same must be removed by the owner or occupier of the land, within 21 days after notice from the surveyor, on pain of forfeiting 10*s.* for every neglect. (5 & 6 Will. IV. c. 50, § 64.)

If the surveyor think any carriage or cart-way prejudiced by the shade of any hedges or trees (except those for ornament or shelter to any hop ground, house, building, &c., of the

(*a*) 1 Roll, Abr., 390 (a), pl. 1; 2 Show., 21; 2 Lev., 234; Cro. Car., 369; *Robertson* v. *Gauntlett*, 16 M. & W., 289.
(*b*) *Taylor* v. *Whitehead*, 2 Doug., 744. (*c*) *Reg.* v. *Shiles*, 1 Q. B., 919.
(*d*) *R.* v. *Phillips*, 1 L. R. Q. B., 648; 35 L. J. M. C., 217.

owner), he may summon the owner to show cause why the same are not pruned, &c., and if the Justices order the same to be pruned, &c., the offender must forfeit 40*s.* unless he complies with the order, and the surveyor's expenses of getting the hedges, &c., pruned. (5 & 6 Will. IV. c. 50, § 65.)

The word owner in this section means the person in actual occupation of the premises (*a*).

No person can be compelled, nor any surveyor permitted, to cut or prune hedges at any other time than between the 30th September and the 31st March, nor to fell or grub up oak-trees growing in hedges, except in the months of April, May, or June; and ash, elm, or other trees, except in December, January, February, or March. (5 & 6 Will. IV. c. 50, § 66.)

Nuisances and Offences on Highways.

Riding or driving on footpath; tethering cattle on footpath or highway; obstructing the footway by lecturing or preaching; damaging the highway, or fences, posts, or bridges, &c.; pitching tents on highway; playing games on highway; letting off fireworks or firing a gun or pistol on highway to the annoyance of passengers; placing rubbish or offensive matter on highway within 15 feet of the centre of the road; suffering filth or offensive matter to flow upon the highway from adjoining premises: or in any way wilfully obstructing the passage of the highway. For each and every of the above offences a penalty is incurred not exceeding 40*s.* above the damage occasioned. (5 & 6 Will. IV. c. 50, § 72; 27 & 28 Vict. c. 101, § 51.)

Any person encroaching by making or causing to be made any building, pit, hedge, ditch, &c., or by placing dung, rubbish, &c., on the sides of any road, within 15 feet of the centre; or by removing any soil or turf from the sides thereof, will be liable to a penalty of 40*s.*, and the expenses of removing any such building, &c. (27 & 28 Vict. c. 101, § 51.)

Barbed Wire on Highways.

By an Act of 1893 (56 & 57 Vict. c. 32), where there is on any land adjoining a highway a fence made with barbed wire, and such barbed wire is a nuisance to the highway, it shall be lawful for the local authority having control over such highway to serve notice in writing upon the occupier of the land requiring him, within a stated time (not less than one nor more than six months), to abate such nuisance. If the occupier fail to comply, the local authority may apply to a court of

(*a*) *Woodard* v. *Billericay Local Board*, 48 L. J. Ch. D., 535.

summary jurisdiction, who may direct the occupier to abate such nuisance; and on his failure to comply with such order the local authority may do whatever may be necessary, and recover the expenses incurred. Where the local authority are the occupiers, proceedings may be taken by any ratepayer.

Under the Act "barbed wire" means any wire with spikes or jagged projections; and "nuisance to a highway" means barbed wire which may probably be injurious to persons or animals using the highway.

Nuisances from Steam Engines, Windmills, Brick & Lime Kilns.

It is not lawful for any person to sink any pit or shaft, or erect any steam engine, gin or other machine, within 25 yards, nor any windmill within 50 yards of any carriage-way or cart-way; unless the same are within some house or building, or behind some wall or fence sufficient to conceal or screen the same, so that no danger may occur to passengers, horses, or cattle, by fright, or otherwise; and any person so injured thereby can maintain an Action for damages. Nor is it lawful for any person to burn ironstone, limestone, bricks, or clay, or make coke within 15 yards of any roadway, unless within a house or building, or behind a sufficient screen. (5 & 6 Will. IV. c. 50, § 70.)

There may be an exception, however, in the case of old-established mills, kilns, &c.; and it is now provided that a locomotive threshing engine may be used within the prescribed distance of 25 yards, provided (i) that a person be stationed on the road to signal the driver of the engine whenever it is necessary to stop it on account of the approach of a horse, and to render assistance to the person in charge of the horse, and (ii) that the driver of the engine stop the same when so signalled. (57 & 58 Vict. c. 37.)

Furious Riding or Driving.

Any person riding any horse or beast, or driving any sort of carriage, so furiously as to endanger the life or limb of any passenger, is liable, on conviction, to a penalty of £5, or if the driver be the owner of the carriage, of £10. (5 & 6 Will. IV. c. 50, § 78.)

Stray Cattle on Highways.

As to cattle of any kind, and horses, sheep, pigs, &c., found straying on, or lying about on the highway, or across any part thereof, or by the sides thereof (except on such parts as pass over any common or waste ground), the owners are liable to a penalty of 5*s.* for every animal so found; to be recovered in a

summary manner, together with the costs of removing such animal to the owner's premises or the common pound. But not more than 30*s.* besides expenses can be recovered for one offence. (27 & 28 Vict. c. 101, § 25.)

Doors and Gates Opening Outward upon any Road or Footpath.

In urban districts these must be altered at the expense of the occupier after 8 days' notice; and he will be liable, in case of neglect to remove the same after such notice, to a penalty not exceeding 40*s.* (10 & 11 Vict. c. 34, §§ 71, 72.)

Rule of the Road.

A person driving along the highway is not bound to keep on any particular side when the road is clear; but if he drives on what is known as the wrong side, he must keep a better look-out, and get out of the way of those vehicles which are on the proper side, or he will be responsible for damages to those on the proper side; and he will also be liable to a summary conviction and fine (*a*).

Meeting any other vehicle, and not keeping on the left or near side of the road; or wilfully preventing any person from passing, or otherwise interrupting the free passage of the road. Penalty not exceeding £5 if driver is owner; or 40*s.* if only driver. (5 & 6 Will. IV. c. 50, § 78.)

Excessive Weight, or Extraordinary Traffic, over Highway.

Where extraordinary expenses have been incurred by the Highway Authority in repairing a highway by reason of the damage caused by excessive weight passing along the same, or extraordinary traffic thereon, such expenses may be recovered from any person by whom or by whose order such weight or traffic has been conducted. (41 & 42 Vict. c. 77, § 13.)

What is "excessive weight" or "extraordinary traffic" must be determined with reference to the ordinary traffic of the road, and its capacity for bearing weights (*b*).

Light Railways Act, 1896.

By this Act (59 & 60 Vict. c. 48), for the purpose of facilitating the construction and working of light railways in Great Britain, there has been established a commission, to be styled the Light Railways Commissioners, who are to carry the Act into effect, and to offer facilities for considering and maturing proposals to construct light railways.

(*a*) *Pluckwell* v. *Wilson*, 4 C. & P., 375.
(*b*) *Lord Aveland* v. *Lucas*, 49 L. J., C. L. Ap., 643.

Bicycles, Tricycles, and Velocipedes.

A bicycle is a "carriage," and the propulsion of it by a person seated thereon is a "driving of a carriage," and therefore the furious driving of a bicycle is an offence (*a*). But a bicycle is not a carriage within the meaning of a private Act of Parliament for regulating the amount of toll to be paid for using the road (*b*). A tricycle, however, is a carriage or vehicle, and therefore liable to toll for using the road.

A bicycle is not "luggage" which cabmen can be compelled to carry as such; so that a cabman is not bound to carry a bicycle at all, or at the baggage charge of 2d. a package, and is entitled to make his own bargain for its conveyance (*c*).

Nor is it "ordinary luggage" within the meaning of a railway company's Act, which a passenger can require the company to carry as "passenger's luggage" without special payment. "A bicycle cannot be said to be carried about as personal luggage is" (*d*).

By the Local Government Act, 1888 (51 & 52 Vict. c. 41, § 85) all previous enactments, public and local, giving power to regulate bicycles, tricycles, velocipedes, and similar machines, were repealed, and one general enactment substituted.

Every person riding or being upon any such carriage is now required, during the period between one hour after sunset and one hour before sunrise, to carry attached to the carriage a lamp exhibiting a light in the direction in which he is proceeding, and so lighted as to afford adequate means of signalling the approach or position of the carriage; (*e*) and he is also required, upon overtaking any cart or carriage, or any horse or other beast of burden, or any foot passenger, upon the carriage way, when within a reasonable distance in front of such cart, carriage, &c., to sound a bell or whistle, or otherwise give audible and sufficient warning of his approach.

Any person summarily convicted of offending against these regulations shall for each offence be liable to a fine of 40*s*.

(*a*) *Taylor* v. *Goodwin*, 48 L. J. M. C., 104.

(*b*) *Williams* v. *Ellis*, 49 L. J. M. C., 47.

(*c*) So held by the magistrate (Mr. Rose) sitting at West London Police Court, October 4, 1897.

(*d*) *Per* Channell, J., in *Britten* v. *Great Northern Railway Company*, reported in *Times*, Nov. 29th, 1898.

(*e*) It has been held by a Divisional Court that the statute does not authorise a police officer to arrest any person found transgressing this provision; and accordingly, it was ruled that a policeman who had stopped a man riding a bicycle without a light during the specified hours, and who, by putting his hand on the bar of the cycle had upset the rider, was technically guilty of an assault (*per* Collins and Ridley, JJ., in *Hatton* v. *Treesby*, reported in *Times* of 30th July, 1897).

Locomotives on Highways.

Locomotives passing along public highways must (unless they come within the provisions of the Act of 1896, for which see under next heading) be worked according to the subjoined rules (24 & 25 Vict. c. 70; 28 & 29 Vict. c. 83; 41 & 42 Vict. c. 77; 61 and 62 Vict. c. 29):—

1. Two persons must be employed to drive or attend to such locomotive; and if more than three waggons are attached, then an additional person for the purpose of attending to the waggons.

2. Another person shall accompany the locomotive in such manner as to be able to assist persons with horses or carriages drawn by horses passing the same.

3. The drivers of such locomotives must give as much space as possible for the passing of other traffic.

4. The whistle of the locomotive must not be sounded for any purpose whatever; nor the cylinder taps opened within sight of any person riding, driving, or leading a horse upon the road; nor shall the steam be allowed to attain such a pressure as to blow off when the locomotive is upon the road.

5. The locomotive must be instantly stopped on signal being given by any person with a horse or with a carriage drawn by a horse.

6. The locomotive must be provided with two efficient front lights when passing along the road at night, between one hour after sunset and one hour before sunrise from April 1st to September 30th, and between sunset and sunrise from October 1st to March 31st, and must also carry within these hours a red light in the rear (of locomotive or waggons, as the case may be).

The speed when on the roads is not to exceed 4 miles an hour, and when passing through towns and villages 2 miles.

Penalty on infringement of rules, £10. The name and residence of the owner must be conspicuously affixed to the locomotive. Maximum penalty £2 for default.

Every locomotive used on any highway must be constructed on the principle of consuming its own smoke. Fine, in default, £5 per day.

By the Locomotives Act, 1898 (61 & 62 Vict. c. 29), new provision has been made as to the weights which may be carried by waggons drawn by locomotives on highways; new powers are given to borough and county councils for regulating the use of locomotives on highways; and the locomotives (with certain exceptions) are required to be licensed by the county councils, special provision being made as to agricultural locomotives and steam locomotives.

Light Locomotives (Auto-Cars or Motor-Cars) Act, 1896.

The Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), which came into operation on 14th November, 1896, provides that existing enactments restricting the use of locomotives on highways (including the enactments cited under the last preceding heading) shall not apply to any vehicle propelled by mechanical power if it is under three tons in weight unladen, and is not used for the purpose of drawing more than one vehicle (such vehicle with its locomotive not to exceed in weight unladen four tons), and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause; and vehicles so exempted, whether locomotives or drawn by locomotives, are classed as "light locomotives" (§ 1).

It is provided, however, that the council of any county or county borough shall have power to make byelaws preventing or restricting the use of such locomotives upon bridges within their area, and that a light locomotive shall be deemed to be a carriage within the meaning of existing Acts of Parliament, or byelaws made thereunder; and, if used as a carriage of any particular class, shall be deemed a carriage of that class (§ 1).

In calculating the weight of a vehicle unladen, the weight of any water, fuel, or accumulators, used for the purpose of propulsion, shall not be included (§ 1).

During the period between one hour after sunset and one hour before sunrise, the person in charge of a light locomotive shall carry attached thereto a lamp so constructed and placed as to exhibit a light in accordance with the regulations to be made by the Local Government Board; every light locomotive shall carry a bell or other instrument capable of giving audible and sufficient warning of the approach or position of the carriage; and no light locomotive shall travel along a public highway at a greater speed than 14 miles an hour, or than any less speed that may be prescribed by regulations of the Local Government Board (§§ 2, 3, 4).

The keeping and use of petroleum or of any other inflammable liquid or fuel for the purpose of light locomotives shall be subject to regulations made by a Secretary of State (§ 5).

The Local Government Board were empowered by the same Act to make regulations with respect to the construction and use of light locomotives, and have accordingly issued the regulations set out below.

A breach of any byelaw or regulation made under the Act, or of any provision of the Act, is punishable by a fine not exceeding £10 (§§ 6, 7).

Official Regulations for Motor Cars.

Under the Locomotives on Highways Act, 1896 (see p. 539), the Local Government Board have issued the following regulations, taking effect as from 14th November, 1896:—

ARTICLE I.—In this order—

The expression "carriage" includes a wagon, cart, or other vehicle.

The expression "horse" includes a mule or other beast of draught or burden, and the expression "cattle" includes sheep.

The expression "light locomotive" means a vehicle propelled by mechanical power, which is under three tons in weight unladen, and is not used for the purpose of drawing more than one vehicle (such vehicle with its locomotive not exceeding in weight unladen four tons), and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause.

In calculating for the purposes of this order the weight of a vehicle unladen, the weight of any water, fuel, or accumulators used for the purpose of propulsion shall not be included.

ARTICLE II.—No person shall cause or permit a locomotive to be used on any highway, or shall drive or have charge of a light locomotive when so used, unless the conditions hereinafter set forth shall be satisfied, namely:—

1. The light locomotive, if it exceeds in weight unladen 5 cwt., shall be capable of being so worked that it may travel either forwards or backwards.

2. The light locomotive shall not exceed 6½ ft. in width, such width to be measured between its extreme projecting points.

3. The tyre of each wheel of the light locomotive shall be smooth and shall, where the same touches the ground, be flat and of the width following, namely:—(*a*) If the weight of the light locomotive unladen exceeds 15 cwt., but does not exceed one ton, not less than 2½ in.; (*b*) if such weight exceeds one ton, but does not exceed two tons, not less than 3 in.; (*c*) if such weight exceeds two tons, not less than 4 in.

Provided that where a pneumatic tyre or other tyre of a soft and elastic material is used, the tyre may be round or curved, and there may be upon the same projections or bosses rising above the surface of the tire, if such projections or bosses are of the same material as that of the tyre itself, or of some other soft and elastic material. The width of the tyre shall, for the purpose of this proviso, mean the extreme width of the soft and elastic material on the rim of the wheel when not subject to pressure.

4. The light locomotive shall have two independent brakes in good working order, and of such efficiency that the application of either to such locomotive shall cause two of its wheels on the same axle to be so held that the wheels shall be effectually prevented from revolving, or shall have the same effect in stopping the light locomotive as if such wheels were so held.

Provided that in the case of a bicycle this regulation shall apply as if, instead of two wheels on the same axle, one wheel was therein referred to.

5. The light locomotive shall be so constructed as to admit of its being at all times under such control as not to cause undue interference with passenger or other traffic on any highway.

6. In the case of a light locomotive drawing or constructed to draw another vehicle or constructed or used for the carriage of goods, the

name of the owner and the place of his abode or business, and in every such case and in the case of every light locomotive weighing unladen one ton and a half or upwards, the weight of the light locomotive unladen shall be painted in one or more straight lines upon some conspicuous part of the right or off-side of the light locomotive in large legible letters in white upon black or black upon white, not less than one inch in height.

7. The light locomotive and all the fittings thereof shall be in such a condition as not to cause, or to be likely to cause, danger to any person on the light locomotive or on any highway.

8. There shall be in charge of the light locomotive when used on any highway a person competent to control and direct its use and movement.

9. The lamp to be carried attached to the light locomotive in pursuance of section 2 of the Act shall be so constructed and placed as to exhibit during the period between one hour after sunset and one hour before sunrise, a white light visible within a reasonable distance in the direction towards which the light locomotive is proceeding or is intended to proceed, and to exhibit a red light so visible in the reverse direction. The lamp shall be placed on the extreme right or off-side of the light locomotive in such a position as to be free from all obstruction to the light.

Provided that this regulation shall not extend to any bicycle, tricycle, or other machine to which section 85 of the Local Government Act, 1888, applies.

ARTICLE III.—No person shall cause or permit a light locomotive to be used on any highway for the purpose of drawing any vehicle, or shall drive or have charge of a light locomotive when used for such purpose unless the conditions hereinafter set forth shall be satisfied—namely,

1. Regulations 2, 3, 5, and 7 of Article II. of this order shall apply as if the vehicle drawn by the light locomotive was therein referred to instead of the light locomotive itself, and regulation 6 of the article shall apply as if such vehicle was a light locomotive constructed for the carriage of goods.

2. The vehicle drawn by the light locomotive, except where the light locomotive travels at a rate not exceeding four miles an hour, shall have a brake in good working order of such efficiency that its application to the vehicle shall cause two of the wheels of the vehicle on the same axle to be so held that the wheels shall be effectually prevented from revolving, or shall have the same effect in stopping the vehicle as if such wheels were so held.

3. The vehicle drawn by the light locomotive shall, when under the last preceding regulation a brake is required to be attached thereto, carry upon the vehicle a person competent to apply efficiently the brake. Provided that it shall not be necessary to comply with this regulation if the brakes upon the light locomotive by which the vehicle is drawn are so constructed and arranged that neither of such brakes can be used without bringing into action simultaneously the brake attached to the vehicle drawn, or if the brake of the vehicle drawn can be applied from the light locomotive independently of the brakes of the latter.

ARTICLE IV.—Every person driving or in charge of a light locomotive when used on any highway shall comply with the regulations hereinafter set forth, namely:—

1. He shall not drive the light locomotive at any speed greater than is reasonable and proper, having regard to the traffic on the highway, or so as to endanger the life or limb of any person, or to the common danger of passengers.

2. He shall not under any circumstances drive the light locomotive at a greater speed than twelve miles an hour. If the weight unladen of the light locomotive is one ton and a half and does not exceed two tons, he shall not drive the same at a greater speed than eight miles an hour, or if such weight exceeds two tons at a greater speed than five miles an hour.

Provided that whatever may be the weight of the light locomotive, if it is used on any highway to draw any vehicle, he shall not under any circumstances drive it at a greater speed than six miles an hour.

Provided also that this regulation shall only have effect during six months from the date of this order, and thereafter until we otherwise direct.

3. He shall not cause the light locomotive to travel backwards for a greater distance or time than may be requisite for purposes of safety.

4. He shall not negligently or wilfully cause any hurt or damage to any person, carriage, horse, or cattle, or to any goods conveyed in any carriage on any highway, or, when on the light locomotive, be in such a position that he cannot have control over the same, or quit the light locomotive without having taken due precautions against its being started in his absence, or allow the light locomotive or vehicle drawn thereby to stand on such highway so as to cause any unnecessary obstruction thereof.

5. He shall when meeting any carriage, horse, or cattle keep the light locomotive on the left or near side of the road, and when passing any carriage, horse, or cattle proceeding in the same direction keep the light locomotive on the right or off side of the same.

6. He shall not negligently or wilfully prevent, hinder, or interrupt the free passage of any person, carriage, horse, or cattle on any highway, and shall keep the light locomotive and any vehicle drawn thereby on the left or near side of the road for the purpose of allowing such passage.

7. He shall, whenever necessary, by sounding the bell or other instrument required by section 3 of the Act, give audible and sufficient warning of the approach or position of the light locomotive.

8. He shall, on the request of any police-constable or of any person having charge of a restive horse, or on any such constable or person putting up his hand as a signal for that purpose, cause the light locomotive to stop, and to remain stationary so long as may be reasonably necessary.

Article V.—If the light locomotive is one to which regulation 6 of Article II. applies, and the particulars required by that regulation are not duly painted thereon, or if the light locomotive is one to which that regulation does not apply, the person driving or in charge thereof shall, on the request of any constable, or on the reasonable request of any other person, truly state his name and place of abode, and the name of the owner, and the place of his abode or business.

Duties on Light Locomotives.

On and after 1st January, 1897, there shall be paid in Great Britain for every light locomotive liable to duty, either as a carriage or as a hackney carriage (see *post*, p. 663), an additional duty of excise, if the weight exceeds one ton unladen, but does not exceed two tons unladen, of £2 2s.; and if the weight exceeds two tons unladen, £3 3s.

SECTION VII.—MEDICAL LAW.

Medical Register.

The Registrar of the General Medical Council is required to publish every year a correct list, in alphabetical order, of the names of all persons duly qualified to practise, with their places of residence, such list to be called the "Medical Register;" and the absence of any name from such list will be evidence in any Court of law that such person is not duly registered. (21 & 22 Vict. c. 90.)

Medical Practitioners and Surgeons.

Persons practising in surgery or medicine must be duly qualified, and their names registered.

Every person possessed of any one or more of the qualifications described, shall on payment of a fee not exceeding £2, in respect of qualifications obtained before the 1st January, 1859, and not exceeding £5 in respect of qualifications obtained on or after that date, be entitled to be registered. (21 & 22 Vict. c. 90.)

Qualifications for registration may be granted to women. (39 & 40 Vict. c. 41.)

Medical practitioners convicted of felony or misdemeanor may be struck off the register.

Registered persons may have qualifications acquired by them after registration added to the register.

Any person obtaining registration by false representation, will be guilty of a misdemeanor and liable to 12 months' imprisonment. And any person who shall falsely pretend to be registered, or take or use the name or title of a physician, D.M., L.M., and S., B.M., surgeon, general practitioner, or apothecary, will be liable to a fine of £20.

An unqualified practitioner is not entitled to enforce a contract connected with the carrying on of a business, to carry on which lawfully he needs to be registered (*a*).

Privileges of Registered Persons.

Every person registered under the Act is entitled, according to his qualifications, to practise in any part of Her Majesty's dominions, and to recover in due course of law any expenses, charges, or fees, and the costs of medicaments or appliances, unless he be a fellow of a college of physicians forbidden by a

(*a*) *Davies* v. *Makuna*, 29 L. R. Ch. D., 586.

valid byelaw from recovering at law his fees, &c. (49 & 50 Vict. c. 48, § 5.)

It appears to be necessary that a practitioner should be registered at the time the services are rendered, or at all events be qualified to be, and be duly registered before suing (*a*).

Physicians' Right to recover Fees.

A physician, if duly registered under the Medical Act, can recover reasonable charges for professional visits, &c. (*b*). Previous to the passing of this Act, physicians could not recover their fees, unless there was a special contract, whereby the patient or some other person promised and agreed to pay them (*c*).

Surgeons and Apothecaries and their Fees.

Under the Apothecaries Act (*d*), (which is not repealed by the Medical Act, 1858), a member of the College of Surgeons, registered as a surgeon only under the latter Act, and having no further qualification, cannot recover for medicines administered by him in a case not requiring surgical treatment (*e*).

Dentists.

No person, not being a legally qualified medical practitioner, is entitled to use the name or title of "Dentist," or of "Dental Practitioner," or any name, title, &c., implying that he is registered or qualified to practise dentistry, unless he is registered. Liability on summary conviction for infringement, fine not exceeding £20.

Unless a person is registered, or is a legally qualified medical practitioner, he will not be entitled to recover any fee or charge for the performance of any dental operation or advice.

The persons entitled to be registered are: (1) any person who is a licentiate in dental surgery or dentistry of any of the medical authorities; or (2) is entitled to be registered as a foreign or colonial dentist.

Persons registered are to be exempt, if they so desire, from serving on juries and inquests, and from serving corporate, parochial, and the like offices, and from serving in the Militia. (41 & 42 Vict. c. 33.)

(*a*) *Leeman* v. *Housely*, 44 L. J. Q. B., 22.
(*b*) *Gibbon* v. *Budd*, 32 L. J. Ex., 182.
(*c*) *Chorley* v. *Bolcot*, 4 T. R. 317; *Veitch* v. *Russell*, 3 Q. B., 928; and see *Attorney-General* v. *College of Physicians*, 30 L. J. Ch., 757.
(*d*) 55 Geo. III. c. 194.
(*e*) *Leman* v. *Fletcher*, 42 L. J. Q. B., 214.

Chemists and Druggists.

Chemists and druggists may prepare and dispense medicines, but must not attend patients or give advice, except for ordinary ailments, and then only upon their own premises (*a*).

No person is to sell, dispense, or compound poisons, or to assume or use the title chemist, druggist, or pharmacist, unless registered, and subject to such regulations as to the keeping, dispensing, and selling of poisons as may be prescribed by the Pharmaceutical Society with the consent of the Privy Council. (31 & 32 Vict. c. 121, § 1.)

A "proprietary" medicine, such as chlorodyne, not being a "patent" medicine, which contains scheduled poisons, is a poison within the Act (*b*).

Chemists and druggists within the meaning of the Act shall consist of all persons who at any time before the passing of the Act have carried on in Great Britain the business of chemist and druggist, in the keeping of open shop for the compounding of the prescriptions of duly qualified medical practitioners; also of all such persons as may be duly registered under the Act (§ 3).

Any person who shall sell, or keep an open shop for the retailing, dispensing, or compounding of poisons, or who shall take, use, or exhibit the name or title of chemist or druggist, not being duly registered, will be liable to a penalty of £5. The word "person" does not include a corporation; but an incorporated supply association having a department for the sale of drugs under the management of a duly registered chemist is not liable to the penalty (*c*).

A chemist who *bonâ fide* believes he is dispensing a prescription given by a medical man to a person named at the foot thereof, is not liable, under the 17th section of the Pharmacy Act, for selling poison to a person unknown to him (*d*).

It is not an offence under the Act for a shopkeeper not being a chemist to sell a medicine containing an infinitesimal quantity of poison as defined by the Act (*e*).

Remedies Advertised with Offer of Money.

Where the proprietors of a medical preparation had advertised that they would pay £100 to anyone who caught in-

(*a*) *Apothecaries Co.* v. *Shepperly* (1870).
(*b*) *Pharmaceutical Society* v. *Piper*, L. R. (1893) 1 Q. B., 686.
(*c*) *Pharmaceutical Society* v. *Lond. and Provincial Supply Association*, 49 L. J. Q. B., 736.
(*d*) *Berry* v. *Henderson*, 39 L. J., M. C., 77.
(*e*) *Pharmaceutical Society* v. *Delve*, Div. Ct. (1894), 1 Q. B. 71.

fluenza after using their preparation in the manner prescribed, and a person who had complied with the conditions, but had caught influenza, sued for the amount offered, it was held that the facts presented in the case established a contract between Plaintiff and Defendants which was neither a contract by way of wagering under 8 & 9 Vict. c. 109 (see *ante*, p. 138), nor a wagering policy under 14 Geo. III. c. 48, § 2 (see *ante*, p. 258), and that the £100 was recoverable from the Defendants (*a*).

Experiments on Living Animals (*Vivisection*).

By an Act of 1876 (39 & 40 Vict. c. 77) which was passed to restrict and control the practice of vivisection, experiments calculated to give pain to living vertebrate animals are prohibited, except under certain restrictions, as follows :—

(i) The experiment must be performed with a view to the advancement by new discovery of physiological knowledge, or knowledge useful for saving or prolonging life, or alleviating suffering. (ii) It must be performed by a person holding a licence from one of H.M. Secretaries of State. (iii) The animal must be under the influence of some anæsthetic of sufficient power to prevent it feeling pain ; and (iv) must, if pain is likely to continue after the anæsthetic has ceased, or if any serious injury has been inflicted, be killed before it recovers from the influence of the anæsthetic. (v) The experiment must not be performed as an illustration of lectures in medical schools, or elsewhere ; nor (vi) for the purpose of attaining manual skill.

Subject to these restrictions (which under circumstances mentioned in the Act may be modified), experiments may be performed by licensed persons on obtaining a certificate from the president of one of the medical societies mentioned in the Act, and from a public professor of medical science.

Any exhibition to the general public of painful experiments on living animals is absolutely prohibited.

The penalties for infringement of the Act are £50 for a first offence, and £100, or imprisonment for 3 months, for a second offence.

Infectious Diseases (*Notification*) *Act*, 1889.

This Act (52 & 53 Vict. c. 72) came into operation in the "London district"—*i.e.*, the City of London, and the area under the London County Council—on 1st November, 1889 (*b*);

(*a*) *Per* Hawkins, J., in *Carlill* v. *Carbolic Smoke Ball Company*, L. R. (1892) 2 Q. B. 484, confirmed on appeal (C. A. (1893) 1 Q. B 256).

(*b*) As regards the Metropolis, the Act has been repealed, and its provisions substantially re-enacted, by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76) : see *ante*, p. 513.

but it was not to apply to other parts of the country until after its adoption by an urban, rural, or port sanitary district.

It is enacted that (where the Act is in operation)—

Where an inmate of any building used for human habitation is suffering from an infectious disease to which this Act applies, then, unless such building is a hospital in which persons suffering from an infectious disease are received, the following provisions shall have effect, that is to say :—

(i) The head of the family to which the patient belongs, and in his default the nearest relatives of the patient present in the building or in attendance on the patient, and in default of such relatives every person in charge of or in attendance on the patient, and in default of any such person the occupier of the building shall, as soon as he becomes aware that the patient is suffering from an infectious disease to which this Act applies, send notice thereof to the medical officer of health of the district :

(ii) Every medical practitioner attending on or called in to visit the patient shall forthwith, on becoming aware that the patient is suffering from an infectious disease to which this Act applies, send to the medical officer of health for the district a certificate stating the name of the patient, the situation of the building, and the infectious disease from which, in the opinion of such medical practitioner, the patient is suffering (§ 3).

Every person who is thus required to give a notice or certificate who fails to give the same, shall be liable on summary conviction to a fine not exceeding forty shillings (§ 3).

The Local Government Board are to prescribe forms of certificates under the Act, and any forms so prescribed are to be used in all cases to which they apply (§ 4).

It is also provided that the local authority shall gratuitously supply forms of certificate to any medical practitioner residing or practising in their district who applies for the same, and shall pay to every medical practitioner for each certificate duly sent by him in accordance with this Act a fee of two shillings and sixpence if the case occurs in his private practice, and of one shilling if the case occurs in his practice as medical officer of any public body or institution (§ 4).

A local authority may adopt the Act by resolution ; and fourteen clear days at least before such meeting special notice of the meeting, and of the intention to propose such resolution, is to be given to every member of the local authority (§ 5).

A resolution adopting the Act is to be published by advertisement in a local newspaper, and by handbills, and otherwise in such manner as the local authority think sufficient, and is to

come into operation at such time, not less than one month after the first publication of the advertisement of the resolution, as the local authority may fix (§ 5).

The expression "infectious disease to which the Act applies" means any of the following diseases, namely, small-pox, cholera, diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names, typhus, typhoid, enteric, relapsing, continued, or puerperal, and includes as respects any particular district any infectious disease to which the Act has been applied by the local authority (§ 6).

Where the local authority extend the definition of "infectious disease" in their district, they are to notify the fact to each registered medical practitioner in their district (§ 7).

The provisions of the Act are to apply to every ship, vessel, or boat (not belonging to a foreign Government), tent, van, shed, or similar structure used for human habitation (§ 13); but the Act is not to extend to any building, ship, vessel, boat, tent, van, shed, or similar structure belonging to Her Majesty the Queen, or to any inmate thereof (§ 15).

Infectious Disease (Prevention) Act, 1890.

This enactment (53 & 54 Vict. c. 34) was supplementary to the Act of 1889 set out above. It was to come into operation in the "London District" (*a*) on 4th November, 1890, but in urban or rural sanitary districts only after adoption.

It confers upon local authorities stringent powers for the inspection of dairies in cases of infection attributed to milk, with power to prohibit supplies of milk. New powers are given to local authorities to require the cleansing and disinfecting of infected premises, the disinfection of bedding, &c.; while penalties are imposed on persons ceasing to occupy infected houses without disinfection or notice to the owner.

Retention for more than 48 hours, except in a mortuary or other suitable place, of the body of a person who has died from an infectious disease, is allowed only under medical sanction.

Vaccination.

It is still nominally the law that all children born in England must be vaccinated within six months of their birth, unless a public vaccinator or medical practitioner certify that any such child is not in a fit state to be vaccinated, and neglect to have a

(*a*) As regards the Metropolis, the Act was repealed, and its provisions substantially re-enacted, by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76): see *ante*, p. 513.

child vaccinated renders the parent or guardian liable to a penalty not exceeding 20*s*. This was the law (except that three months was the limit of age) under an Act of 1867 (30 & 31 Vict. c. 84); and it was further provided by a later Act that the Defendant in any proceedings under the Vaccination Acts need not appear in person, but might do so by any member of his family, or other person authorised by him. (34 & 35 Vict. c. 98, § 10.)

It has now, however, been provided by the Vaccination Act, 1898 (61 & 62 Vict. c. 49, § 2) that no parent or other person having the custody of a child shall be liable to any penalty under § 29 [for non-vaccination] or § 31 [for disobedience of magisterial order to have a child vaccinated] of the Vaccination Act of 1867 if within four months from the birth of the child he satisfies two justices, or a stipendiary or Metropolitan police magistrate, in petty sessions, that he conscientiously believes that vaccination would be prejudicial to the health of the child, and within seven days thereafter delivers to the vaccination officer for the district a certificate by such justices or magistrate of such conscientious objection (*a*).

This section came into operation on the passing of the Act on August 12th, 1898, but in its application to a child born before the passing of the Act there was to be substituted for the period of four months from the birth of the child the period of four months from that date.

By the new Act, also, in case of vaccination by the public officer being desired by the parent, the public vaccinator is directed to visit the child's home on request instead of the parent being required to take the child to the public vaccinator; in case of non-vaccination within four months from birth, the public vaccinator is directed to visit the home, after at least twenty-four hours' notice to the parent, and to offer

(*a*) No form of magistrate's certificate is prescribed by the Act, but the following is the form which has been approved by the Metropolitan Police Magistrates for use in their courts:—

"Metropolitan Police District. To wit, ———

"I hereby certify that, ———, the parent (or other person having the custody) of the child ———, born on the ——— day of ———, 18——, has this day stated before me that —he conscientiously believes that vaccination will be prejudicial to the health of the said child, and that —he has a conscientious objection to the child being vaccinated on that ground; and I am satisfied that —he has such conscientious belief.

"Given under my hand at the ——— Police Court, this ——— day of ———, 18——.

"———, one of the Magistrates of the Police Courts of the Metropolis."

to vaccinate with glycerinated calf lymph or such other lymph as may be issued by the Local Government Board, but the public vaccinator is not to operate in a house or district unsafe from a prevalence of infectious disease (§ 1).

A list of patients is to be kept by the clerk of any sanitary authority maintaining a small-pox hospital, showing the condition of the patients as to vaccination, and such list is to be open to public inspection at a fee of 6d. for each search (§ 8).

In the case of persons who have become liable to penalties, the Act provides that a magistrate's order directing vaccination (which under § 31 of the Act of 1867 might be made repeatedly until an unvaccinated child has reached the age of 14) is not to be made on any person convicted of non-compliance with a similar order relating to the same child; that no proceedings for disobedience to such an order shall be taken against any person who has been convicted, under § 29 of the Act of 1867, for not having the same child vaccinated, until it has reached the age of four years; and that persons committed to prison for non-compliance with any order under the Acts or non-payment of fines or costs under them are to be treated as first-class misdemeanants (§§ 3, 4, 5).

The Local Government Board, if in their opinion it is expedient by reason of serious risk of outbreak of small-pox or of other exceptional circumstances, may require the guardians of any Poor-law union to provide vaccination stations for the vaccination of children with glycerinated calf lymph or other lymph issued by the Board, and may modify the provisions of the Act requiring the public vaccinator to visit the home of the child otherwise than on request of the parent (§ 7).

The Act does not extend to Scotland or Ireland.

Advertisements of Medical Treatment.

Whoever affixes to or inscribes on any building, hoarding, gate, fence, pillar, board, tree, or any other thing whatsoever, so as to be visible to a person passing along any street, highway, or footpath, and whoever affixes to or inscribes on any public urinal, or delivers or attempts to deliver, or exhibits, to any person in any street, public highway, or footpath, or throws down the area of any house, or exhibits to public view in the window of any house or shop, any picture or printed or written matter of an indecent or obscene nature (including any advertisement relating to syphilis, gonorrhœa, nervous debility, or the like complaint or infirmity), will be liable to a penalty not exceeding 40*s*., or to imprisonment for a month, with or without hard labour. (52 & 53 Vict. c. 18, §§ 3, 5.)

And whoever delivers to another person any such pictures or printed or written matter, to be so affixed or used, will be liable to a penalty not exceeding £5, or imprisonment for not more than three months, with or without hard labour (§ 4).

A police officer may arrest without warrant a person whom he finds committing an offence under the Act (§ 6).

SECTION VIII.—ASYLUMS.

Lunacy Acts, 1890 *and* 1891.

By these statutes (53 Vict. c. 5, and 54 & 55 Vict. c. 65) the laws relating to the care of lunatics have been consolidated and amended, and provision made in great detail for the steps to be taken in dealing with persons of unsound mind, whether as private patients or in public asylums.

It is now enacted that no person, unless a pauper or a lunatic so found by inquisition, shall be received and detained in an institution for lunatics or as a single patient, unless under a reception order made by a justice of the peace specially appointed as provided in the Acts, or a judge of county courts or magistrate, having respectively jurisdiction in the place where the lunatic is; but no relative of the person applying for such order, or of the lunatic, or of the husband or wife of the lunatic, may make such order. The order is to be obtained upon a private application by petition, accompanied by a statement of particulars and by two medical certificates made in accordance with the requirements and forms of the Acts.

In the case of paupers, special provision is made.

Private Lunatic Asylums.

These have to be licensed before any person can be received or detained therein, and the Lunacy Act, 1890 (see above) provides that no new licence shall now be granted save as therein directed to existing licensees or their successors. In London and Middlesex, and within seven miles of the Metropolis, the licensing jurisdiction is exercisable by the Lunacy Commissioners (§§ 207, 208).

Every person who receives into an unlicensed house, not being a registered hospital nor an asylum, or takes the care or charge of any person therein as a lunatic, without having such

order and medical certificates as are required by law, is guilty of a misdemeanor. (8 & 9 Vict. c. 100, § 90.)

Care of Idiots.

By the Idiots Act, 1886, special provisions, analogous in some respects to those in force as to the treatment of lunatics, were enacted with respect to the custody of idiots and imbeciles. (49 Vict. c. 25.)

Retreats and Reformatories for Drunkards.

Under the Inebriates Acts, 1879, 1888, and 1898 (42 & 43 Vict. c. 19 ; 51 & 52 Vict. c. 19 ; 61 & 62 Vict. c. 60) retreats for the reception of habitual drunkards may be licensed by County Councils. Any habitual drunkard desirous of being admitted into a retreat must apply in writing. The application must be accompanied by a statutory declaration of two persons that the applicant is an habitual drunkard ; and his signature must be attested by a Justice of the Peace. After admission the applicant must not leave till the expiration of the term stated in the application, such term not to exceed two years. Every retreat must be inspected at least twice a year by the Inspector appointed by the Secretary of State.

By the Act of 1879, "habitual drunkard" is defined as meaning "a person who, not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself (or herself) or to others, or incapable of managing himself (or herself) or his (or her) affairs."

By the Act of 1898 (which comes into operation on January 1st, 1899) any habitual drunkard who is admitted by himself to be such, or is found by the jury so to be, if he be convicted on indictment of an offence, and the Court is satisfied that the offence was committed under the influence of drink, may be ordered by the Court, in addition to, or in substitution for, any other sentence, to be detained in any State or certified inebriate reformatory the managers of which are willing to receive him. Further, any habitual drunkard who is found drunk in a public place, or who commits any one of the offences specified in the Act, in which drunkenness is an ingredient, after having within 12 months been convicted three times of any such offence, will be liable upon conviction for the fourth offence to be similarly detained in any certified inebriate reformatory.

Provision is made by the Act of 1898 for the establishment

of inebriate reformatories by the Secretary of State, to be maintained as State institutions out of money provided by Parliament, and for the certifying by the Secretary of State of other inebriate reformatories on the application of a County Council or of any persons whatever, if he be satisfied as to the fitness of the reformatory and of the persons proposing to maintain it. Both the Treasury and the County Councils may contribute towards the expenses of a certified reformatory, or County Councils may themselves undertake their establishment and maintenance.

The cost of maintaining any person, whether in a State or in a certified reformatory, may be recovered from his estate in the event of its being more than sufficient to maintain his family, if any.

Infant Life Protection Act, 1897.

By this Act (60 & 61 Vict. c. 57)—which repealed, as from January 1st, 1898, the Infant Life Protection Act, 1872—any person retaining or receiving for hire more than one infant under the age of five years, for the purpose of nursing or maintaining such infants apart from their parents, for a longer period than 48 hours, is required within the said 48 hours to give notice to the local authority, stating truly the name, age, and sex of such infants, the name of the person receiving the infants, the dwelling within which such infants are being kept, and the name and address of the person or persons from whom the infants have been received, under a penalty not exceeding £5, or six months' imprisonment (§§ 2, 9).

Any person receiving an infant under the age of two years on consideration of a sum of money not exceeding £20 paid down, and without any agreement for further payment, as value for the care and bringing up of the said infant, shall within 48 hours from the time of receiving such infant give notice of the fact to the local authority; and if he does not give such notice he shall be liable to forfeit any sum received in respect of such infant, and the Court shall give directions as to the manner in which the sum forfeited shall be applied for the benefit of the infant, and shall, if necessary, cause the infant to be removed to a workhouse (§ 5).

Other stringent provisions are contained in the Act, and powers are given to local authorities for its enforcement, for the inspection of houses where infants are received. In London the Common Council and the County Council, in other districts boards of Guardians, and in Scotland parish councils, are the authorities for enforcing the Act.

SECTION IX.—REGISTRATION OF BIRTHS AND DEATHS.

Births.

In the case of every child born alive it is the duty of the father and mother, and in case of default by them of the occupier of the house, and of each person present at the birth, and the person having charge of the child, to give to the Registrar within 42 days next after the birth information of such birth, and in the presence of the Registrar to sign the register (37 & 38 Vict. c. 88, § 1).

Where a birth has not been registered, the Registrar may at any time after the 42 days, by notice in writing, require any of the persons referred to in the Act (see above) to attend personally at his office (not less than seven days after receipt of such notice, and not more than three months from the date of the birth), and give information, to the best of such person's knowledge and belief, of the particulars required to be registered, and to sign the register in his presence (§ 2).

Foundlings.

If a new-born child is found deserted or exposed, it is the duty of any person finding such child, and of the person in whose charge it may be placed, to give, to the best of his knowledge and belief, to the Registrar, within seven days of the finding, such information of the particulars required to be registered concerning the birth as the informant possesses, and to sign the register in the Registrar's presence (§ 3).

No Fee payable to Registrar.

The Registrar is to register all births and deaths without fee or reward, unless he has to attend at the residence of the informant or house in which the birth took place, in which case he is entitled to a fee of 1*s*.

Procedure when Registration Delayed.

After the expiration of three months next after the birth, but no later than 12 months, the Registrar may, by notice in writing, require any of the persons required by the Act to give information to attend personally at his office, and make before the Superintendent Registrar a solemn declaration as to the particulars required.

After 12 months, the birth cannot be registered except with the written authority of the Registrar-General.

Every person registering a birth in contravention of these provisions will be liable to a penalty not exceeding £10 (§ 5).

Illegitimate Children.

The father of an illegitimate child is not required to register the birth, and the Registrar must not enter in the register the name of any person as father of such child unless at the joint request of the mother and of the person acknowledging himself to be the father; and such person must in such case, together with the mother, sign the register (§ 7).

Where Name of Child Given or Altered after Registration.

If any child shall have been registered as aforesaid, and within 12 months after such registration have any additional or different name given to it in baptism, the parent or guardian or other person may deliver to the Registrar or Superintendent Registrar a certificate, in accordance with the Act, signed by the minister who baptised the child; and thereupon, on payment of an appointed fee of 1*s.*, the Registrar or Superintendent Registrar must add such baptismal names to the entry on the register, without any erasure, and certify accordingly to the Registrar-General (§ 8).

Deaths.

When a person dies in a house it is the duty of the nearest relatives present at the death or in attendance during the last illness, and in default of such relatives, of every other relative dwelling or being in the same sub-district as the deceased, and in default of such other relatives, of each person present at the death, and of the occupier and inmates of the house, and of the person causing the body to be buried, to give, to the best of his knowledge and belief, to the Registrar within five days of the day of such death, information of the particulars required to be registered concerning such death, and in presence of the Registrar to sign the register (§§ 9, 10).

Deaths elsewhere than in a House.

Where a person dies, or a dead body is found, elsewhere than in a house, it is the duty of every relative having knowledge of any of the particulars required to be registered, and in default of such relative, of every person present at the death, and of any person finding or taking charge of the body, or causing it to be buried, to give to the Registrar within five days next after the death or finding, such information of the particulars

required to be registered as the informant possesses, and in the presence of the Registrar to sign the register (§ 11).

Written Notice of the Death.

If any person required to give information send to the Registrar a written notice of the death, with a medical certificate of the cause of death, the information required to be registered may be given at any time within 14 days next after the death (§ 12).

Where Information of Death Not Given.

In default of information as to death, the Registrar may after 14 days, and within 12 months, require any person who ought to have given information of the death, or of the finding of any dead body, to attend at his office and give the information required, and to sign the register in his presence (§ 13).

After the expiration of 12 months next after the death or finding of a dead body, the death cannot be registered except with the written authority of the Registrar-General (§ 15).

Inquests.

Where an inquest is held on a body, the Jury are to inquire of the particulars required to be registered, and the Coroner is to send to the Registrar within five days of the finding of the Jury a certificate, giving the information required and particulars of cause of death, &c. (§ 16).

Registration of Births and Deaths at Sea.

If any child be born at sea, or if any person die at sea, on board a British vessel or a vessel carrying passengers to or from any English port, the captain or commanding officer of the vessel must forthwith make a minute of the several particulars required to be inserted in the register touching such birth or death, and on the arrival of such vessel in any port of the United Kingdom, or by any other sooner opportunity, must send a certificate of such minute to the Registrar-General, to be entered in the "Marine Register Book" (§ 37).

Giving False Information on Registration.

Any person wilfully making or causing to be made, for the purpose of being inserted in any register of birth, death, or marriage, any false statement touching any of the particulars required to be known and registered, is to be subject to the same pains and penalties as if he were guilty of perjury. (6 & 7 Will. IV. c. 86, § 41.)

SECTION X.—BURIAL OF THE DEAD.

Certificate of Death before Burial.

Either a Coroner's order or a Registrar's certificate is to be delivered to the person who buries or performs any funeral service for the burial of the body of any deceased person. The Registrar, upon registering or receiving notice of a death (see *ante*, pp. 553-4), is bound to give the necessary certificate, without fee or reward. And the person who buries or performs such service without any such order or certificate must give notice thereof in writing to the Registrar within 7 days, under a penalty not exceeding £10. (37 & 38 Vict. c. 88, § 17.)

Still-born children are not to be buried without a written certificate that they were not born alive, signed by a registered medical practitioner; or a declaration that no medical practitioner was present at the birth, and that the child was not born alive; or if there has been an inquest, a Coroner's order. Penalty for acting in disregard of these provisions, £10 (§ 18).

A special procedure is imposed by the Friendly Societies Act in the case of children insured for burial payments. (59 & 60 Vict. c. 15.)

Burial Laws Amendment Act, 1880.

Any relative, friend, or legal representative having charge of or being responsible for the burial of a deceased person, may give 48 hours' "notice of burial" to the Rector, Vicar, or other Incumbent, or in his absence the officiating minister, of any parish, &c., that it is intended to bury such deceased person within the churchyard or graveyard of such parish, &c., without the performance of the Church of England burial service; and after receiving such notice no such Rector, &c., shall be liable to any censure or penalty for permitting any such burial. (43 & 44 Vict. c. 41.)

The notice must be plainly signed with name and address of the person giving it; and should be to the effect following:—

Burial Notice.

I, of , being the relative [*or* friend *or* legal representative, *as the case may be, describing the relation if a relative*] having the charge of or being responsible for the burial of A. B., of , who died at , in the parish of , on the day of , do hereby give you notice that it is intended by me that the body of the said A. B. shall be buried within the [*here describe the churchyard or graveyard in which the body is to be buried*] on the day of , at the hour of without the performance in the manner prescribed by law of the service for the burial of the dead according to the rites of the Church of England, and I give this notice pursuant to the Burial Laws Amendment Act, 1880.

To the Rector [*or, as the case may be*] of

The time of burial (unless it be otherwise mutually arranged) must be between the hours of 10 A.M. and 6 P.M. between April 1st and October 1st; and between 10 A.M. and 3 P.M. between October 1st and April 1st. And no such burial is to take place in a churchyard on Sunday, Good Friday, or Christmas Day, if objected to in writing for a reason assigned, by the person receiving the notice. Burials under the Act may be either with or without religious service. But they must be conducted in a decent and orderly manner (§§ 3—6).

The person having the charge of, or being responsible for such burial as aforesaid shall, on the day thereof or the next day, transmit a certificate of such burial to the Rector, Vicar, or Minister, who shall thereupon register the same (§ 10).

Burial of Bodies cast Ashore.

The Churchwardens and Overseers of a parish in which a dead human body is cast ashore from the sea, or from any tidal or navigable waters, must cause it to be removed and interred with all convenient speed in the parish burial ground.

Every person finding any such body on the shore of the sea, or of any tidal or navigable waters, must give notice either to such parish officers or to a police-constable within 6 hours after finding the body; and on so doing he is entitled to 5*s.* for his trouble. (48 Geo. III. c. 75; 49 Vict. c. 20.)

Burial of Body of Felo de se.

The interment of the body of a *felo de se* may be made in any of the ways authorised by the Burials Act, 1880, but without the rites of Christian burial. (45 & 46 Vict. c. 19.)

Cremation.

It has been held that it is not a misdemeanor to burn a dead body, unless it be done so as to amount to a nuisance, or with a view to prevent an inquest being held (*a*). But a direction by a testator that his body should be given to A, not an executor, with a view to its being burnt, was held not enforceable, and void. There being no property by the law of England in a dead body, a person cannot dispose of his remains by will. After death the custody and possession of the body belongs to the executor until it is buried (*b*).

It would appear that the remains of a deceased person cannot lawfully be cremated unless the deceased has, by will

(*a*) *Per* Stephen, J., in *Reg.* v. *Price*, L. R. 12 Q. B. D., 247; and see *Reg.* v. *Stephenson*, L. R. 13 Q. B. D., 331; 53 L. J. M. C., 176.

(*b*) *Williams* v. *Williams*, L. R. 20 Ch. D., 659; 51 L. J. R., 385.

or otherwise, given directions to that effect. "As by common law, as well as by ecclesiastical law, any person (subject to certain exceptions) dying in England is entitled to Christian burial in the accustomed form in a consecrated burial ground belonging to his own parish or to the parish in which he may have died, it is not competent to an executor or administrator, or to any other person on whom the law imposes the duty of burying the deceased, by cremation to deprive him of that right, unless he has left written directions or expressed in his life a wish to be cremated" (*a*).

Where it is desired to place or inter in a consecrated building an urn containing the ashes of a body which has been cremated, it appears that a faculty will be requisite, and that this will only be granted if the course proposed be unobjectionable on sanitary grounds (*b*).

In a recent case, where a husband's remains had been buried eighteen years previously in consecrated ground, and his wife, who was executrix, now desired that the body should be exhumed with a view to cremation—the husband having given her the option of either burial or cremation—leave to disinter the remains was refused. "When burial in consecrated ground and cremation are both desired, cremation should precede burial. Although the Burial Service does not contemplate cremation, yet where a body has been consumed in a fire, it has been customary to collect the ashes and to bury them with the use of the office for the burial of the dead; and there does not appear to be any legal objection to the same course being followed after cremation in pursuance of the wishes of the deceased" (*c*).

SECTION XI.—SUNDAY TRADING.

By the Act 29 Ch. II. c. 7, it was provided that no tradesman, workman, artificer, or labourer, "on pain of forfeiting five shillings," should work on the Lord's day (except for works of necessity or charity), nor use any boat or barge, nor expose any goods for sale except meat, to be dressed and sold at inns and victualling houses to persons not otherwise pro-

(*a*) *Per* Dr. Tristram, Chancellor of Diocese of London, in re *C. W. R. Kerr, deceased*, reported in *Times*, June 9, 1894.

(*b*) See case referred to in last preceding note.

(*c*) *Per* Chancellor Tristram, in re *Dixon* (29 July, 1892), 27 *Law Journal*, 562.

vided for. Milk, however, it was allowed, might be sold before nine in the morning, and after four in the afternoon, and mackerel might be sold before and after divine service.

In accordance with this Act, it has been held that no Action can be brought for the price of goods sold on a Sunday in the ordinary course of the trade or business of the vendor unless the sale is within the exceptions of the Act (*a*). But it has been held that farmers, attorneys, and surgeons do not come within the classes of persons mentioned in the statute as tradesmen, artificers, workmen, and labourers (*b*); also that a coach proprietor, or the driver of a hackney coach, is not a workman or labourer within the meaning of the Act. A contract, therefore, for the hire of his coach, or a place therein, is not illegal, although made on a Sunday (*c*). And where goods bought on Sunday have been kept by the purchaser and he has subsequently promised to pay for them, an action will lie to enforce payment (*d*).

To prevent the scandal of arbitrary and oppressive prosecutions under the Act 29 Ch. II. c. 7, it was enacted in 1871 by 34 & 35 Vict. c. 87, that no proceedings thereunder should be instituted, except with the consent in writing of the chief officer of police of the district, or of two justices of the peace, or of a stipendiary magistrate, and no such prosecution can be heard before the magistrate by whom and with whose consent it has been instituted.

By an Act of the same session—34 & 35 Vict. c. 19—Jews were exempted from penalties for working on the Sunday.

By the Act 21 Geo. 3, c. 49, it was enacted that if a house, room, or place be opened for any public entertainment, or for debating upon any subject, on Sunday, to which persons are admitted by money or tickets, the keepers thereof shall forfeit £200, the manager or president £100, the receiver of money or tickets £50, and every person printing an advertisement of such meeting £50. By 38 & 39 Vict., c. 80, however, Her Majesty was empowered to remit any fine or forfeiture imposed or recovered under this last-mentioned Act.

By the Licensing Acts (see next section) special provision is made as to the hours during which the business of public-houses is allowed to be carried on on Sunday, except where (as in Scotland and Wales, and certain towns in Ireland) Sunday Closing Acts are in operation.

(*a*) *Fennell* v. *Ridler*, 5 B. & C., 406; *Peate* v. *Dicken*, 1 C. M. R., 422. *See* also 10 & 11 Will. III. c. 24.

(*b*) *Rex* v. *Whitmarsh*, 7 B. & C., 602; *Scarfe* v. *Morgan*, 4 M. & W., 270.

(*c*) *Sandiman* v. *Breach*, 7 B. & C., 96. (*d*) 6 Bing. 653.

SECTION XII.—INNKEEPERS AND THEIR CUSTOMERS.

Closing of Premises.

Premises licensed for the sale of intoxicating liquors are required to be closed as follows (37 & 38 Vict. c. 49, § 3):—

1. In the Metropolitan District:
   - (*a.*) From midnight on Saturday until 1 o'clock on Sunday afternoon.
   - (*b.*) From 11 o'clock on Sunday night until 5 o'clock on Monday morning.
   - (*c.*) On all other days from half an hour after midnight until 5 o'clock the same morning.

2. Beyond the Metropolitan District, but in the Metropolitan Police District or in a town or "populous place":
   - (*d.*) From 11 o'clock on Saturday night until 12.30 on Sunday morning.
   - (*e.*) From Sunday night at 10 o'clock until 6 o'clock on the following morning.
   - (*f.*) On the nights of all other days from 11 o'clock until 6 o'clock the following morning.

3. If situated elsewhere than in the Metropolitan Police District or in such town or "populous place" as aforesaid:
   - (*g.*) From 10 o'clock on Saturday night until 12.30 P.M. on Sunday.
   - (*h.*) From 10 o'clock on Sunday night until 6 o'clock on Monday morning.
   - (*i.*) On the nights of all other days from 10 o'clock until 6 o'clock the following morning.

Licensed premises, wherever situate, shall be closed on Sunday afternoons as follows:—

- (*k.*) Where opened at 1 o'clock, from 3 to 6 o'clock.
- (*l.*) Where opened at 12.30, from 2.30 to 6 o'clock.

Christmas Day and Good Friday are each to be treated as a Sunday in respect of the closing of licensed premises (37 & 38 Vict. c. 49, § 3); and the Licensing Justices may, beyond the Metropolitan district, vary the hour of opening on Sundays from 12.30 P.M. to 1 P.M., in which case the licensed premises shall remain closed during the afternoon from 3 to 6 P.M. (§ 6). The holder of an early closing licence under § 7 of 37 & 38 Vict. c. 49, shall close his house one hour earlier at night than the ordinary closing hour.

Special and Occasional Licenses.

Licensed premises may be exempted by an order of the

Local Authority of the licensing district from closing at all hours except between the hours of 1 and 2 in the morning, where it is required for the accommodation of a market or for the following of a lawful trade or calling; and notice of such exemption must be affixed in a conspicuous position on the outside of the premises, under a penalty of £5 (35 & 36 Vict. c. 94, § 26); and further, the Local Authority may, by order, exempt any licensed premises from closing on a special occasion such as a festival, ball, dinner, &c. (§ 29).

An occasional licence for the sale of liquors by retail at non-licensed premises may be granted by one Justice to the holder of a licence for not more than 6 consecutive days. (25 & 26 Vict. c. 22, § 13; 26 & 27 Vict. c. 33, §§ 19, 20; 37 & 38 Vict. c. 49, § 19.)

Conduct of Licensed Premises.

A licensed person may supply liquors during prohibited hours to a *bonâ fide* traveller (37 & 38 Vict. c. 49, § 10) or to a lodger in his house, and he may also entertain his own private friends after the hours of closing (§ 30). But the provisions of § 10 do not authorise a licensed person, during the time that the licensed premises are required to be closed, to sell liquor to a *bonâ fide* traveller for consumption by such traveller *off* the premises (*a*). Neither do these provisions permit the holder of a six-day licence to sell during closing hours on Sunday; and nothing in the Act precludes the sale of liquors at any time at railway refreshment rooms to persons arriving or departing by train (*b*).

A *bonâ fide* traveller is deemed to be a person who has lodged the previous night at least 3 miles distant from the premises at which he demands to be supplied with liquor, calculated by the nearest public thoroughfare, and no person shall be convicted under § 10 if he satisfies the Court before whom he is brought that he believed the purchaser of liquor was a *bonâ fide* traveller, and took all reasonable precaution to ascertain the truth of any representation to this effect. It is a question of fact for the decision of the Justices as to whether a licensed person took all proper precautions to ascertain, and honestly believed that his customer was a *bonâ fide* traveller (*c*).

It has been decided by the Court for Crown Cases Reserved

(*a*) *Mountifield* v. *Ward*, Div. Ct. (1897) 1 Q.B., 326.

(*b*) *Copley* v. *Burton*, 5 L. R. C. P., 489.

(*c*) *Peplow* v. *Richardson*, L. R., 4 C. P., 168; *Taylor* v. *Humphries*, 30 L. J., M. C., 242; *Atkinson* v. *Sellers*, 5 C. B. (N.S.), 442; 23 J. P., 71; *Peache* v. *Colman*, 1 L. R. C. P., 324; *Roberts* v. *Humphreys*, 8 L. R. Q. B., 483

(four judges assenting; Cave, J., dissenting), that a person who walks more than three miles with the object only of obtaining drink is not a *bonâ fide* traveller; so that a publican who serves a professed traveller, knowing that the only object of his journey was to obtain drink, may be convicted of the offence of selling during prohibited hours (*a*).

A *bonâ fide* lodger in an inn may invite friends to dinner or to hear some music in his room, and supply them, after closing hours, with liquors obtained from the innkeeper (*b*).

Offences and Legal Proceedings.

Any person selling or exposing for sale by retail any intoxicating liquors which he is not authorised to sell, or selling or exposing for sale intoxicating liquors where he is not licensed to sell the same: Penalty for *first* offence not exceeding £50, or imprisonment with or without labour not exceeding one month; for *second* offence not exceeding £100 or imprisonment with or without labour not exceeding 3 months, and offender may by order be disqualified from holding a licence for 5 years; and for *third* and subsequent offences £100 or imprisonment with or without labour not exceeding 6 months, and he may be disqualified for any term of years or for ever from holding a licence. Upon a second or subsequent conviction, all intoxicating liquors found in the possession of such person, and the vessels containing the same, may be forfeited. (35 & 36 Vict. c. 94, § 3.)

Any person licensed to sell liquors for consumption off the premises, being privy to the drinking of any liquor on the premises or on any highway adjoining thereto: Penalty, *first* offence not exceeding £10, and second and every subsequent offence, £20 (§ 5). Or any such licensed person as is described in § 5 who carries or permits any intoxicating liquors to be carried for sale and consumption on any other premises for his benefit, shall be subject to the same penalties as are provided for by § 5, and the conviction must be endorsed on his licence (§ 6).

Any person selling spirits to children apparently under the age of sixteen: Penalty 20*s.* for *first* offence, and 40*s.* for the second and any subsequent offence (§ 7) (*c*).

Any person selling either by himself or his servant liquor

(*a*) *Penn* v. *Alexander*, (1893) 1 Q. B. 522.

(*b*) *Pim* v. *Barnes*, 20 Q. B. D. 221; and see also *Cope* v. *Landles*, reported in *Times*, 5 November, 1896.

(*c*) But now the sale of *any intoxicating liquor* (not spirits only) to children apparently *under the age of thirteen*, for consumption on the premises, is prohibited (49 & 50 Vict. c. 56).

(not in cask or bottle, and not in quantities less than half a pint) otherwise than in measures of imperial standard : Penalty for first offence not exceeding £10, and for second and any subsequent offence £20, and the illegal measures may be forfeited (§ 8) (*a*).

Any person making, or using, or allowing to be made or used, any internal communication between any licensed premises and any unlicensed premises used for public resort or entertainment or as a refreshment house : Penalty, £10 per day and forfeiture of licence (§ 9) ; but see 37 & 38 Vict. c. 49, § 15, as to continuance of forfeited licence.

Any person having in his possession any description of liquors which he is not authorised to sell, and who cannot account for the possession thereof : Penalty, forfeiture of liquor, and for first offence £10, and for any subsequent offence £20.

Any licensed person not affixing his name on his premises in manner directed by the Justices : Penalty not exceeding £10 for first offence, and £20 for any subsequent offence (*b*).

In addition to the above penalties, Excise penalties may also be recovered for selling beer without a licence, under 1 Wm. IV. c. 64, § 7, and 4 & 5 Wm. IV. c. 85, § 17. A licence for the sale of beer is also void on conviction for felony, or for selling spirits without a licence (3 & 4 Vict. c. 61, § 7).

Offences against Public Order.

Being found drunk on any highway or other public place, or on licensed premises : Penalty, first offence not exceeding 10*s*., second offence within 12 months 20*s*., and third and subsequent offence within 12 months, 40*s*. (35 & 36 Vict. c. 94, § 12).

Being drunk and disorderly on any highway or public place (*c*), or being drunk while in charge of any horse, carriage, or steam engine, or in possession of any loaded firearms on any highway or public place : Penalty not exceeding 40*s*., or the offender may be committed to prison with or without hard labour not exceeding 1 month (§ 12).

Any person being drunk, violent, quarrelsome, and disorderly on licensed premises and refusing to quit the same by request of the licence-holder, or his agent, or servant, or any constable : Penalty not exceeding £5. A constable is bound to render assistance in excluding any such person (§ 18).

(*a*) *Reg.* v. *Aulton*, 30 L. J. Q. B., 217 ; *Washington* v. *Young*, 19 L. J. Ex., 348.

(*b*) *Gibb* v. *Bright*, 36 J. P., 168.

(*c*) As to public place, see *Sewell* v. *Taylor*, 29 L. J. M. C., 50 ; *Cole* v. *Coulton*, 29 L. J. M. C., 125.

Any licensed person permitting drunkenness, or any violent, quarrelsome, or riotous conduct on his premises, or sells liquors to a drunken person: Penalty for first offence, not exceeding £10; and for second and subsequent offence, £20; and conviction may be recorded on licence. (§ 13.) Where a drunken man is seen drinking on licensed premises, it is not necessary to prove that drink had been supplied to him on the premises to establish the offence of permitting drunkenness (*a*).

Any licensed person allowing his house to become the habitual resort of prostitutes by allowing them to remain longer therein than is necessary for obtaining reasonable refreshment: Penalty, first offence, not exceeding £10; and second and subsequent offence £20; and conviction may be recorded (§ 14).

Any licensed person permitting his premises to be a brothel: Penalty not exceeding £20 and forfeiture of licence, and such person is disqualified for ever from holding any licence for the sale of intoxicants (§ 15) (*b*).

Any licensed person harbouring thieves, or allowing his premises to become the depositing place of stolen goods: Penalty, not exceeding £10, and offender may be bound over with sureties to keep the peace (34 & 35 Vict. c. 112, § 10).

Any licensed person harbouring, or suffering to remain, or supplying liquor or refreshment, whether by gift or sale, to any constable while on duty, or bribing or attempting to bribe any such constable: Penalty, first offence £10, second and subsequent offences £20; and convictions may be recorded (*Id.*, § 16) (*c*).

Any licensed person suffering gaming in or allowing his house to be used for betting in contravention of 16 & 17 Vict. c. 119: Penalty, first offence £10, and second and any subsequent offence £20; and conviction may be recorded (*d*).

Any licensed person keeping open his premises for the sale of intoxicating liquors during the time they are ordered by Justices to be closed in case of riot or anticipated riot: Penalty not exceeding £50; and Justices may order premises to be closed by force (*Id.*, § 23) (*e*).

Any licensed person selling, or exposing for sale, or keeping open his premises for the sale or consumption of intoxicating liquors during closing hours: Penalty, first offence £10, and

(*a*) *Hope* v. *Warburton*, (1892) 2 Q. B., 134.
(*b*) *Reg.* v. *J. J.* of *Holland*, 46 J. P., 312.
(*c*) *Mullins* v. *Collins*, L. R., 9 Q. B., 292.
(*d*) *Patten* v. *Rhymer*, 29 L. J. M. C., 189; *Avards* v. *Davies*, 26 J. P., 427; *Redgate* v. *Haynes*, 1 Q. B. D., 89; *Crabtree* v. *Hold*, 43 J. P., 852; *Allport* v. *Nutt*, 1 C. B., 974.
(*e*) *Newman* v. *Earl of Hardwicke*, 8 A. & E., 124.

for any subsequent offence £20 (37 & 38 Vict. c. 49, § 9); and conviction may be recorded (*a*).

Any person (other than a lodger, inmate, or servant) being found on unlicensed premises during prohibited hours: Penalty not exceeding 40*s*. (35 & 36 Vict. c. 94, § 25.)

Any person falsely representing himself to be a traveller or lodger, and attempting to buy or obtain intoxicating liquors during closing hours: Penalty not exceeding £5. (*Id.*)

Any person being found on premises where any intoxicating liquor has been seized by warrant under 37 & 38 Vict. c. 49, § 17, shall be deemed to have been on such premises for the purpose of dealing in such liquors, and will under that section be liable on conviction to a penalty of 40*s*.; and by the same section any such person giving a false name or address shall be subject on conviction to a penalty not exceeding £5.

Any person refusing to admit a constable in the execution of his duty to licensed premises: Penalty, first offence £5, and for any subsequent offence £10. (37 & 38 Vict. c. 49, § 16.)

Any licensed person defacing or obliterating, or attempting to deface or obliterate, any record of a conviction on his licence: Penalty not exceeding £5. (35 & 36 Vict. c. 94, § 34.)

Refreshment Houses and Restaurants (*b*).

A refreshment house is a place kept open for providing the public with food, drink, and entertainment after 10 o'clock at night or before 5 o'clock in the morning, and which, if not licensed

---

(*a*) *Thompson* v. *Greig*, 34 J. P., 214; *Jefferson* v. *Richardson*, 35 J. P., 69; *Brewer* v. *Shepherd*, 36 J. P., 373.

(*b*) A decision has been given by the Court of Crown Cases Reserved (*Reg.* v. *Jones*, C. C. R. [1898] 1 Q. B. 119) which, it would seem, sets at rest the old controversy amongst justices as to whether it is an offence within § 88 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), to obtain a meal at an inn or restaurant without paying for it; and it may now be taken as established (from the decision in that case) that, in the absence of some distinct evidence of a false pretence by words or conduct *beyond the mere ordering and eating of a meal* by a person who knows he has not the means to pay for it, no offence under that section [that is, no offence of "obtaining goods by false pretences"] is committed.

It has been suggested that the Courts have so construed § 13 (subs. 1) of the Debtors Act, 1869 (32 & 33 Vict. c. 62), as to make it applicable to the "bilking" of innkeepers—that section making it a misdemeanor for a debtor in incurring a debt or liability to obtain *credit* by false pretences or other fraud. To order a meal without putting the price down is to incur a debt, and in *Regina* v. *Peters*, 55 L. J. R. M. C. 173 (1886), credit was held correlative to debt, and not to mean commercial credit. But the penalty under the Act of 1869 being one year's imprisonment (see *ante*, p. 242), its provisions are not likely to be utilised in cases of "bilking" an inn- or restaurant-keeper of the price of a meal.

for the sale of beer, cider, wine, or spirits, requires no rating qualification; but if licensed for the sale of foreign wine to be consumed on the premises it must have an annual value of £10 per annum; or if situate in a place having a population exceeding 10,000 it requires an annual value of £20 per annum. (See 23 Vict. c. 27, §§ 6—8; 24 & 25 Vict. c. 91, §§ 8—10; and 26 & 27 Vict. c. 33, § 18.)

Any person keeping a refreshment house without a licence: Penalty not exceeding £20, recoverable as an Excise penalty. (23 Vict. § 9, as amended by 23 & 24 Vict. c. 113, § 42.)

Any person keeping open a refreshment house, or selling or exposing for sale refreshments during prohibited hours (*i.e.*, between the time fixed for closing licensed public-houses and 4 o'clock the following morning), (27 & 28 Vict. c. 64, § 5, amended by 37 & 38 Vict. c. 49, § 11): Penalty not exceeding £5; but if any such house is situated in the neighbourhood of a market, the Justices may at the time of granting licences exempt such house from closing. (28 & 29 Vict. c. 77, 2.)

To prevent the abuse of the practice of sending out from refreshment houses to obtain liquors from the nearest public-house, intoxicating liquors are not to be consumed at a refreshment house during the hours licensed houses are required by law to be closed. (35 & 36 Vict. c. 94, § 27.)

Any refreshment-house keeper permitting gaming on his premises, or suffering thieves, prostitutes, or drunken and disorderly persons to remain on his premises, or doing or permitting any act in contravention of his licence: Penalty, first offence not exceeding 40*s.*; second, not exceeding £5; any subsequent offence £20, or forfeiture of licence and disqualification for licence for a year. (23 Vict. c. 27, § 32.)

Liabilities of Innkeepers to their Customers.

By the custom of the realm an innkeeper is bound to receive a guest at any hour of the day or night, provided the guest offer himself in proper condition to be received into the inn, and is ready to pay for his accommodation, and there be room to accommodate him (*a*), but at a mere refreshment bar attached to an inn a landlord may refuse to serve.

An innkeeper is not bound to supply refreshments or accommodation to a traveller or other person who, being accompanied by a large dog, persists in the dog staying with him in the inn whilst he partakes of refreshments (*b*); and upon a similar principle it would appear that an innkeeper would not be bound to

(*a*) *Fell* v. *Knight*, 8 M. & W., 269; *R.* v. *Ivens*, 7 C. & P., 213.
(*b*) *The Queen* v. *Rymer*, 46 L. J. M. C., 108.

supply a mere bar customer who makes himself objectionable to other customers.

The law implies a promise on the part of the innkeeper to take care of the goods of his guest (*a*). But an innkeeper is not an insurer of the goods; he is not liable unless there be default in him or his servants in the well and safe keeping of the guest's goods and chattels; for the innkeeper is bound to keep them safely without any stealing or purloining; and it is no excuse for an innkeeper to say he delivered the key to the guest. And although the thief who stole the guest's goods be unknown, yet the innkeeper will be liable (*b*).

If one bring a bag or chest to an inn, containing deeds or other specialties, and by default of the innkeeper they are taken away, the innkeeper must answer for them (*a*). But if the guest be guilty of gross negligence, as by leaving his bedroom door unfastened at night, or by incautiously exposing valuables, and then leaving them unguarded in a public room of the inn, the innkeeper will not be liable (*c*).

A coffee-house where beds and provisions are furnished at night and in the daytime, is a common inn, and the keeper thereof is subject to the same liabilities as an innkeeper (*d*).

But the salaried manager of an hotel, belonging to a company, is not an innkeeper so as to be by law personally liable to an Action at the suit of a guest whose goods have been stolen from the inn, although the licence be granted to such manager personally (*e*). The Action in such a case should be brought against the company or proprietors.

When a lady, having come to an hotel as a traveller, stayed on for several months, and refused to leave when the hotelkeeper preferred she should not continue there, it was held, on her claiming redress for being refused re-admission, that the common law liability of an innkeeper to receive a guest into his inn attaches only where the guest is a traveller, and that where a guest so received has ceased to be a traveller the innkeeper may, after giving reasonable notice, eject him even without any grounds for so doing afforded by the conduct of the guest, and although there is ample accommodation for him in the inn (*f*).

(*a*) *Morgan* v. *Ravey*, 6 H. & N., 265.

(*b*) *Cayle's Casé*, 1 Smith, L. C. (6th ed.), 105

(*c*) *Armistead* v. *White*, 20 L. J. Q. B., 524; *Burgess* v. *Clements*, 4 M. & S., 306; 1 Stark., 251, n.

(*d*) *Thompson* v. *Lacy*, 3 B. & Ald., 283.

(*e*) *Dixon* v. *Birch*, 42 L. J. Ex., 135.

(*f*) *Lamond* v. *Richards*, Div. Ct. (1897) W. N. 7 (11); affirmed by C. A. (1897) W. N. 17 (9).

Infected Rooms at Inns and Hotels.

Any innkeeper who knowingly lets to any person any room or rooms in which any person has been suffering from any dangerous infectious disorder without having such room or rooms and all infected articles therein disinfected to the satisfaction of a legally qualified medical practitioner, and so testified by a certificate signed by him, shall be liable to a penalty of £20. (38 & 39 Vict. c. 55, § 128.)

Statutory Protection to Innkeepers.

By the Innkeepers' Act, 1863 (26 & 27 Vict. c. 41), no innkeeper is to be liable to make good to any guest any loss of or injury to goods or property brought to his inn to a greater amount than £30, except (i) where such goods or property shall have been stolen, lost, or injured through the wilful act, default, or neglect of such innkeeper or any servant in his employ ; or (ii) where such goods or property shall have been deposited expressly for safe custody with such innkeeper. But the innkeeper may require, as a condition of his liability, that such goods or property be deposited in a box, or other receptacle, fastened and sealed by the person depositing the same (§ 1).

Any innkeeper refusing to receive such goods for safe custody from any guest will not be entitled to the benefit of the Act. A copy of the first section must be exhibited in a conspicuous part of the hall or entrance to an inn ; otherwise the innkeeper will not be entitled to the benefit of the Act (§ 3). The word "inn" is to include hotels, inns, taverns, public-houses, and other places of refreshment (§ 4).

The protection afforded to innkeepers by the Act does not extend to horses or other animals, or to the gear appertaining thereto, or to carriages. If a man go to an inn and deliver his horse to the ostler and require him to put it to pasture, and afterwards the horse is stolen from the pasture, the innkeeper will not be liable for the loss. But if the innkeeper, of his own head, puts his guest's horse to grass, he must answer for it if it be stolen (*a*).

Lien of Innkeepers.

An innkeeper cannot detain his guest in default of payment of his bill (*b*). Though it appears he may detain his goods (*c*), but not goods the property of a third person sent

(*a*) *Cayle's Case*, 1 Smith, L. C. (6th ed.), 105.
(*b*) *Sunbolf* v. *Alford*, 3 M. & W., 248.
(*c*) *Robinson* v. *Waller*, 3 Bulst., 269 ; *Johnson* v. *Hill*, 3 Stark., 172 ; *Turrill* v. *Crawley*, 13 Q. B., 197.

to the guest in the inn for temporary use, as a piano upon hire (*a*). But in a case where a person took a private sitting-room at an hotel and hired a piano, which the innkeeper supposed to belong to his guest, and did not know to the contrary; it was held that the innkeeper had a lien upon the piano for the debt due to him from his guest (*b*).

And where some goods received by a commercial traveller staying at an inn were known by the innkeeper to be the property of his employers, entrusted to him for sale in the district, it was held that the innkeeper had a lien on the goods for the traveller's unpaid bill for board and lodging (*c*).

Sale by Innkeepers of Goods of Defaulting Customers.

By the Innkeepers' Act, 1878 (41 & 42 Vict. c. 38), special authority is given to the landlord of any inn (in addition to his ordinary lien), to sell by public auction any goods, chattels, carriages, horses, wares, or merchandise deposited with him or left in the house he keeps, or in the coach-house, stable, or other premises belonging or appurtenant thereto, by a customer indebted to him for the amount of his board or lodging, or for keep and expenses of any horse or other animals left with or standing at livery in the stables or fields of such innkeeper.

But no such goods may be sold until they have been six weeks in the charge of the innkeeper, and at least one month before the sale an advertisement must be inserted in one London newspaper, and one country newspaper circulating in the district where the goods were left, giving notice of the intended sale.

Small Debts for Intoxicating Liquors are Irrecoverable.

No person (although licensed to sell by retail) can sue for small sums for spirituous liquors; that is to say, unless the debt has been contracted at one time to the amount of 20*s.* or upwards (24 Geo. II. c. 40, § 12); nor can any item in an account for distilled spirituous liquors be allowed, where liquors delivered at one time and mentioned in such item do not amount to 20*s.* at the least (*d*). But this does not apply to liquors delivered at the purchaser's residence in quantities of not less than a quart at one time.

Debts for beer, porter, &c., consumed on the premises where sold cannot be recovered (see *ante*, p. 25).

(*a*) *Broadwood* v. *Granara*, 10 Ex., 417.
(*b*) *Threlfall* v. *Borwick*, 44 L. J. Q. B., 87.
(*c*) *Robins* v. *Gray*, (1895) 2 Q. B. 78; C. A. (1895) W. N., 171 (7).
(*d*) *Burnyeat* v. *Hutchinson*, 5 B. & Ald., 241; *Lansdale* v. *Clark*, 1 Ex. 78.

SECTION XIII.—MISCELLANEOUS MATTERS.

Cleansing of Persons Infested with Vermin.

By an Act of 1897 (60 & 61 Vict. c. 31) power is given to any local authority (including the council of any county borough, any district council, any board of guardians, and in the county of London any sanitary authority, and in Ireland and Scotland any local sanitary authority) to permit any person who shall apply to the said authority, on the ground that he is infested with vermin, to have the use, free of charge, of the apparatus (if any) which the authority possess for cleansing the person and his clothing from vermin; and the use of such apparatus is not to be considered parochial relief or charitable allowance.

For carrying out this Act, local authorities may expend out of the poor rate any reasonable sum on buildings, appliances, and attendants.

Collieries, Mines, and Quarries.

The Coal Mines Regulation Acts, 1887 to 1896, contain stringent enactments against the employment of women or girls in any coal mine below ground, and as to the employment of boys therein; together with numerous clauses for the protection of miners and the safe working of mines. (50 & 51 Vict. c. 58; 57 & 58 Vict. c. 52; 59 & 60 Vict. c. 43.)

The Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), and the amending Acts, contain analogous provisions.

By the Quarries Act, 1894 (57 & 58 Vict. c. 42), the provisions of the Metalliferous Mines Regulation Acts, with certain modifications, are extended to quarries, which are to include every place (not being a mine) in which persons work in getting slate, stone, coprolites, or other minerals, and any part of which is more than twenty feet deep.

Injured Animals in Public Places.

By the Injured Animals Act, 1894 (57 & 58 Vict. c. 22), a police-constable who finds a horse, mule, or ass so severely injured that it cannot without cruelty be led away, is empowered, if the owner is absent or refuses to consent to the destruction of the animal, to summon a veterinary surgeon, and if the surgeon certify that the animal is mortally injured, or so severely that it is cruel to keep it alive, the constable may cause the animal to be slaughtered. Any reasonable expense so incurred may be recovered from the owner.

Building upon Disused Burial-Grounds.

No buildings may be erected upon any disused burial-ground,

except for the purpose of enlarging a church, chapel, meeting-house, or other place of worship. (47 & 48 Vict. c. 72.)

Fairs.

The Home Secretary, upon representation made to him by the local Justices, or by the owner of any fair, that it would be for the convenience and advantage of the public that the fair should be abolished, or the day or days of holding any such fair altered, may make an order abolishing or altering the days for such fair. (34 Vict. c. 12 ; 36 & 37 Vict. c. 37).

In the Metropolis, the Commissioner of Police has power to take summary proceedings before a Magistrate to prevent the holding of unlawful fairs. (31 & 32 Vict. c. 106).

Street Music, Organ Grinders, and Singers.

Any householder within the Metropolitan Police District may personally, or by his servant, or by any police-constable, require any street musician or street singer to depart from the neighbourhood of the house of such householder on account of the illness, or the interruption of the ordinary occupations, of any inmate of such house, or for other reasonable or sufficient cause ; and every person who shall play or sing in any public place near such house, after being so required to depart, will be liable to a penalty not exceeding 40*s.* or imprisonment for three days. A constable may take such person into custody without a warrant. (27 & 28 Vict. c. 55, § 1.)

This Act is limited to the Metropolis, but analogous provisions for certain towns have been introduced in Local Acts.

Hop-pickers.

Local Authorities are empowered to make by-laws for securing the decent lodging and accommodation of persons engaged in the picking of hops, fruit, and vegetables. (38 & 39 Vict. c. 55, § 314 ; 45 & 46 Vict. c. 23, § 2.)

Chimney Sweepers.

Every person who carries on the business of a chimney sweeper, and who employs any journeyman, assistant, or apprentice, is required to take out a certificate to be obtained of the chief officer of police for the district. The certificate is to be in force for one year, and the fee to be paid for it 2*s.* 6*d.* (38 & 39 Vict. c. 70, §§ 5—14).

But it appears that a chimney sweeper need not take out a certificate unless he employs an assistant or apprentice. And journeymen or assistants are not required to take out a certificate unless they employ a paid assistant or have an apprentice. Persons who have certificates must not lend or

transfer them, under a penalty of 20*s.*; and a like penalty is imposed for failure to take out a certificate as required by the Act. And every chimney sweeper is obliged, if required by any one for whom he acts, to give his name and address, under a penalty of 10*s.* (§§ 15—19).

And by an Act of 1894 (57 & 58 Vict. c. 51), any person who shall for the purpose of soliciting employment as a chimney sweeper knock at the houses from door to door, or ring a bell, or use any noisy instrument, or to the annoyance of any inhabitant thereof ring the door-bell of any house, will be liable to a penalty of 10*s.* for the first offence, and of 20*s.* for every subsequent offence.

Neither of the Acts applies to Scotland.

Pedlars, Hawkers, and Tinkers.

The term "pedlar" includes any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying or offering goods for sale, or selling or offering for sale his skill in handicraft.

No person is to act as a pedlar without a certificate, under a penalty for first offence 10*s.*; for any subsequent offence 20*s.* Certificates are granted by the chief officer of police of the district in which applicants have resided during one month previous to the application. (34 & 35 Vict. c. 96, § 3.)

A pedlar is at all times, on demand, to produce and show his certificate to any justice of the peace, constable, or officer of police, or any person to whom he offers goods for sale.

"Hawker" means any person who travels with a horse or other beast bearing or drawing burden from place to place carrying for sale goods, wares, or merchandise (fish, fruit, victuals, or coal are excepted), or exposing samples of goods to be afterwards delivered. It also includes any person who travels by any means of locomotion to any place in which he does not usually reside or carry on business, and there sells or exposes for sale any goods, wares, or merchandise in or at any house, shop, room, booth, stall, or other place whatever hired or used by him for that purpose. (51 & 52 Vict. c. 33, § 2.)

A hawker's licence is only granted upon a certificate signed by a clergyman or minister of the place wherein the applicant resides, and two householders of such place, or by a justice or superintendent or inspector of police, attesting that such person is of good character and proper to be licensed. The annual licence costs £2.

Any unlicensed person who (i) uses the words "licensed hawker" or any words importing that he is a hawker, or is licensed; or (ii) trades with or under colour of a licence granted to any person other than his master, is liable to a fine of £10 (§ 5).

Every hawker is to keep his name and "licensed hawker" on every box or other package and every vehicle used for his goods, and upon every room or shop in which his goods are sold, and upon every handbill or advertisement he publishes (§ 6).

Naval and Military Uniforms.

By the Uniforms Act, 1894 (57 & 58 Vict. c. 45), it is unlawful, under a penalty of £5, for any person not serving in the military forces to wear, without the Queen's permission, the uniform of any of the forces, or any dress made to resemble any such uniform, the wearing of the same in a licensed stage-play, music-hall, or circus performance being excepted; and an exception being also made for six years from the passing of the Act (25th August, 1894) for members of a band performing in public in the recognised uniform of the band, but the latter must not be "an exact imitation" of any military uniform.

By the same Act, if any person not serving in the naval or military forces wears, without the Queen's permission, the uniform of any of those forces, or any dress having the appearance or bearing any of the distinctive marks of any such uniform, so as to "be likely to bring contempt" upon the uniform, or employs any other person so to wear it, he will be liable to a fine of £10, or to imprisonment for one month.

Rules for Volunteer Corps.

In a recent case, one of the rules of a Volunteer Corps, to the effect that any member who should fail to make himself efficient should pay to the funds a sum equal to the amount of Government capitation grant he had in consequence failed to earn, was held to be *ultra vires* (*a*).

But it is now provided by the Volunteer Act, 1897 (60 & 61 Vict. c. 47), that the power to make rules for the management of the affairs of a volunteer corps, given by the Volunteer Act, 1863 (26 & 27 Vict. c. 65, §§ 24, 27), "shall extend and be deemed to have always extended" to rules for securing efficiency; and further, that a fine for the breach of any rule shall be recoverable in a court of summary jurisdiction.

(*a*) *Regina* v. *Lewis*, 65 L. J. R. M. C., 126.

PART XIII.

PARLIAMENTARY ELECTIONS.

MEMBERSHIP of the House of Commons is now open to nearly all classes of her Majesty's subjects, successive Statutes having removed most of the numerous disabilities which formerly existed.

Vacation of Seats by Members of Parliament.

By a legal fiction a Member of Parliament is not permitted to resign his seat, which would be casting an indignity on the House of Commons too monstrous to be contemplated. It being, however, contrary to law (6 Anne, c. 7, § 25) for a Member of Parliament to accept an office of profit under the Crown, certain offices conferring for the time being some small pecuniary emolument on their holders are kept as it were in reserve, and any member wishing to give up his seat applies for one of these offices, and by obtaining it vacates his seat.

New Writs.

After a seat becomes vacant a new writ has to be issued. This is in effect a mandatory letter to the returning officer of the constituency, commanding him to convoke the electors to choose a new member.

Returning Officers.

In counties and counties of cities the Returning Officer is the Sheriff or his deputy; in cities or boroughs the Mayor, High Bailiff, or some other person acting as such by custom or statute; in universities the Vice-Chancellor.

Times for Nomination and Poll.

The steps in an election are:—(1) the Notice, formerly called the "Proclamation;" (2) the Nomination; (3) the Poll, should there be a contest; and (4) the Official Declaration.

The following table, extracted from a memorandum issued in 1872 by the Home Office, will be useful in the present place:—

Elections in Counties.

(Say)	July 1.	Receipt of Writ.
	2.	
	3.	Last possible day for Notice.
	4.	
	5.	First possible day for Nomination.
	6.	
	7.	
	8.	First possible day for Poll.
	9.	
	10.	Last possible day for Nomination.
	11.	
	12.	
	13.	
	14.	
	15.	
	16.	
	17.	Last possible day for Poll.

Elections in Boroughs.

(Say)	July 1.	Receipt of Writ.
	2.	Last possible day for Notice.
	3.	
	4.	First possible day for Nomination.
	5.	Last possible day for Nomination.
	6.	First possible day for Poll in ordinary Boroughs.
	7.	First possible day for Poll in District Boroughs.
	8.	
	9.	Last possible day for Poll in ordinary Boroughs.
	10.	
	11.	
	12.	Last possible day for poll in District Boroughs.

It should be noticed that Sundays, Christmas-day, Good Friday, and any public fast or thanksgiving day are not to be counted; and that if any of the days mentioned happen to be Sunday, then the stage of the election, whatever it may be, will not be reached till the Monday, and all succeeding intervals will be advanced by one day (35 & 36 Vict. c. 33, sch. i. rule 56).

Qualifications for a County Vote.

1. *Freeholds.*—Freehold property, whether inherited or pur-

chased, of *forty shillings* annual value or upwards. (Freehold rent-charges do not confer a vote, except upon the owner of the *whole* of the tithe rent-charge of a living.)

Freeholds for life of £5 annual value or upwards; except when acquired by inheritance, marriage, &c., in which case 40*s.* value is sufficient.

2. *Copyholds.*—Copyhold property of £5 annual value or upwards.

3. *Leaseholds.*—Leaseholds (originally of not less than 60 years) of £5 annual value or upwards.

Leaseholds (originally of not less than 20 years) of £50 annual value or upwards.

4. *Dwelling-houses.*—The occupation as owner or tenant of any dwelling-house. A "dwelling-house" includes, for the purposes of the franchise, any "part of a house which is separately occupied as a dwelling," and where the landlord lets out the whole of the house in apartments, retaining no control.

5. £10 *Occupation Franchise.*—The occupation as owner or tenant of any land or tenement of the clear yearly value of not less than £10.

The word "tenement" includes such places as warehouses, counting-houses, shops, and also any part of a house separately occupied for business or professional purposes.

6. *Lodgings.*—The inhabitant occupier of lodgings, in the same house, of the value of £10 per annum unfurnished. "Lodgings" comprise any apartment or place of residence, whether furnished or unfurnished, in a dwelling-house, where the landlord resides and retains control over the passages and outer doors.

Length of Possession.—Freeholds and copyholds must be held for six months, and leaseholds for twelve months, prior to July 15th, except when inherited, or acquired by marriage settlement, &c.

In the case of dwelling-houses, £10 occupation or lodgings, 12 months' occupation prior to July 15th will qualify.

Payment of Rates, &c.—In the case of dwelling-houses (4) and the occupation franchise (5), all poor rates due on the 5th January must be paid on or before July 20th. If the owner is liable for the rates, and has not paid them, the tenant may pay them, and deduct the amount from the rent. Wherever the landlord pays the rates, the overseers are bound to insert the occupier's name in the rate-book. Persons who have received any parochial relief during the 12 months preceding July 15th are disqualified.

Joint Ownership or Occupation.—Where several persons own

property jointly, *only one* of them can claim a vote, unless they have acquired the property by inheritance, marriage, or by will; or except they occupy the property and carry on business as partners thereon, in which case all can claim the franchise, if the value is sufficient.

Only two joint occupiers under the £10 qualification can be registered, unless they derive the property by descent, &c., as above, or are *bonâ fide* engaged in carrying on business as partners. Two lodgers occupying jointly are entitled to vote if their lodgings are of the value of £20 per annum unfurnished.

Successive Occupation.—Two or more premises in the same constituency, if occupied in immediate succession, confer the franchise as if the occupation had been continuous. Lodgers, however, are not entitled to the benefit of this provision, except in case of removal from one set of lodgings to another in the same house.

Property in Parliamentary Boroughs.—A freehold situated in any parliamentary borough gives the owner a county vote, except when it is in his own occupation.

A leasehold or copyhold, if situated in a parliamentary borough, does not give the owner a county vote, even though he does not himself occupy the property.

The Service Franchise.—Any man who himself inhabits a dwelling-house by virtue of any office, service, or employment, is entitled to a vote in respect of the same, provided that the person under whom he serves does not inhabit the house. The Overseers are bound to place the names of all such upon the rate-book as inhabitant householders, notwithstanding that the rent or rates may be paid by their employer.

Notices of Claims to Vote.

Freeholders, copyholders, and leaseholders, in order to obtain the franchise, must send in a notice of claim to the Overseers of the parish in which the property is situated on or before July 20th.

The names of qualified householders and occupiers are placed by the Overseers on the list published by them on the 1st August. No claim is necessary in their case, but if their names are omitted by the Overseers a notice of claim must be sent on or before August 20th.

Lodgers not already registered *must* send in claims to vote on or before August 20th. Those already registered must renew their claims yearly on or before July 25th.

Qualifications for a Borough Vote.

1. *Household Occupation.*—The sole *inhabitant* occupier, as owner or tenant, of a *dwelling-house* for 12 months ending July 15th. (*Note.*—A "dwelling-house" includes any part of a house where that part is separately occupied as a dwelling and the landlord "lets out the whole of the house in separate apartments . . . . and retains no control" (*a*). Sole occupation of one such part qualifies, notwithstanding joint occupation of another part.)

All poor-rates made during the year preceding the 5th January must be paid on or before July 20th. If the owner is liable and has not paid, the occupier may pay, and deduct the amount so paid from the rent.

Wherever the owner is liable to the payment of the poor-rates, the Overseers are required to insert the name of the occupier in the rate-book (48 Vict. c. 3, § 9).

If a man inhabits a dwelling-house by virtue of any office, service, or employment, he is entitled to the franchise, provided that the person under whom he serves does not inhabit the house. The Overseers are bound to place the names of all such upon the rate-book as householders, notwithstanding that the rent or rates may be paid by the employer.

2. *Ten-pound Occupation.*—The occupier as owner or tenant for 12 months ending July 15th, of any land or tenement, which is of a clear yearly value of not less than £10. (*Note.*—The above terms include a warehouse, counting-house, shop, or other building, and also any *part* of a house separately occupied for the purpose of any trade, business, or profession. Such part may be described in claims as "office," "chambers," "studio," or by any other applicable term. Sole occupation of one part will qualify, although another part may be occupied jointly.)

The occupier must have resided in the borough, or within seven miles of its boundary, for six months previous to July 15th. For the City of London, within 25 miles.

All poor-rates must be paid as in No. 1, and also assessed taxes.

Joint occupation qualifies when the aggregate value, if divided, gives an amount of not less than £10 for each occupier.

The occupation in immediate succession of premises in the same or different divisions of *the same* parliamentary borough will confer a vote for the division in which the voter resides

(*a*) *Kirby* v. *Biffen*, L. R., 8 Q. B. D., 201.

on the 15th July. *All* such premises must be stated in the claim, in the order in which they have been occupied. Removal from one parliamentary borough to another, or to a county division, causes the vote to be lost.

The Overseers are bound to place the names of all qualified householders or occupiers on the list published on August 1st. If any are omitted they should send in a claim on or before August 20th.

3. *Lodgings.*—The inhabitant occupier, as tenant for 12 months ending July 15th, of lodgings in *the same house*, such lodgings being worth £10 per annum unfurnished. "Lodgings" comprise any apartments or place of residence, whether furnished or unfurnished, in a dwelling-house (41 & 42 Vict. c. 26, § 5) where the owner resides and retains control over the passages and outer doors (*a*). Additional rooms may be taken during the year without vitiating the qualification. The occupation in immediate succession of different lodgings, of sufficient value, *in the same house*, will entitle a person to the franchise. But removal from one house to another disqualifies. In case of joint occupation, two lodgers, but no more, can claim votes if the value of the lodgings, unfurnished, is sufficient to give £10 to each.

A lodger, who is already on the register in respect of the same lodgings, must send in a claim each year on or before July 25th.

A lodger who is *not* already on the register, or who, being registered, has changed his qualification in any particular, must send in a claim to the Overseers between August 1st and 20th.

4. *Freeman or Burgess.*—In those boroughs where this qualification exists, a freeman, to be entitled to vote, must have resided in the borough, or within seven miles of the place where the poll was taken prior to 1832, for six months prior to July 15th, and must be qualified according to the customary regulations of the borough on July 15th in each year.

5. *Freeholders and Burgage Tenants* in cities and towns which are counties of themselves, viz., Berwick-on-Tweed, Bristol, Exeter, Haverfordwest, Lichfield, Norwich, and Nottingham. The freeholders must be qualified by residence as in No. 2.

Change of Residence.—Occupiers both in counties and boroughs must send in claims if they remove from one house to another in the same constituency.

The Service Franchise.—Any person who separately inhabits a dwelling-house in either borough or county by virtue of any

(*a*) *Bradley* v. *Baylis*, L. R., 8 Q. B. D., 195, 210.

office, service, or employment can claim a vote as a householder, whether he pays rates or not. [What constitutes a separate tenancy for the purpose of this qualification is often a difficult matter to determine.]

Mortgagee's Right to Vote.

A mortgagee of lands or tenements has no right to vote in respect of his mortgage, unless he be in actual receipt of the rents and profits of the lands, &c. (6 Vict. c. 18, § 74).

Temporary Abeyance of Qualification.

By 41 & 42 Vict. c. 3, an inhabitant occupier in boroughs and counties of cities will not incur any disqualification by letting or otherwise permitting the qualifying premises to be occupied as a furnished house, for any period not exceeding 4 months; and by 54 Vict. c. 11 (1891) a person will not be disqualified from being registered (i) in the Parliamentary register for a county or borough in respect of inhabitant occupation of a dwelling-house or lodgings or occupation of any land or tenement; or (ii) in the Local Government register for a county or borough in respect of occupation of any house, warehouse, counting-house, shop, building, land, or tenement, by reason only that during part of the qualifying period not exceeding four months at any one time, he has in the performance of any duty incidental to his office, service, or employment been absent from his dwelling-house or lodgings, or not resided in or within the required distance from such county or borough.

The Practice as to making Claims.

In Counties.—Most of the technical work connected with the registration of voters is performed by paid agents of the different political parties, but it occasionally happens, especially in counties, that an agent transmits a blank form to a person residing at a distance, in order that the same may be duly filled up and signed for presentation to the Overseers before July 15, in order to establish a claim.

The statutory form of claim contains in all cases four columns headed as follows:—(i) Christian name and surname of the claimant at full length; (ii) Place of abode; (iii) Nature of qualification; (iv) Street, lane, or other like place in the parish (or township), and number of house (if any) where the property is situate, or name of the property, if known by any, or name of the occupying tenant; or if the qualification consist of a rent-charge, then the names of the owners of the pro-

perty out of which such rent is issuing, or some of them, and the situation of the property.

First Column.—The name or names should be given at full length. Otherwise the description might be held inaccurate or defective.

Second Column.—The claimant's usual place of residence, or if he has more than one, the one at which he most generally sleeps, should be given. If he is changing his abode he should specify that which will be his abode on the forthcoming July 31.

Third Column.—Ownership qualifications may be described as follows :—"Freehold house," "Freehold house and land," "Freehold tithe rent-charge," "Freehold benefice," "Copyhold land and buildings," "Leasehold house for [60, 21] years." Occupation qualifications may be described as follows :—"Tenement," "Land," "Land and tenement," "Tenement (joint)," "Tenement (successive)," "Shop," "Warehouse," and so on. Dwelling-house qualifications may be described as "Dwelling-house," "Houses occupied in succession."

Fourth Column.—Particular care must be taken to state as fully and explicitly as possible the situation of the property. If the property bears a recognised name, give the name. If the property is a house in a street and numbered, give the number.

When the claim is in respect of properties occupied in succession, the situation of all the properties occupied during the qualifying year must be set forth in due order, the existing occupation being named last.

A claim for the insertion of a name on the property list must bear a date prior to July 15, and be sent or posted so as to reach the Overseers of the parish not later than July 15.

In Boroughs.—The observations made above respecting claims in counties will furnish suggestions and cautions which (with trifling exceptions) are applicable to boroughs, and so need not be repeated here, the more so as the borough system of registration is to a great extent a self-acting one—that is to say, individual voters other than lodgers are not required to do much to help themselves.

In the third column qualifications may be described as follows :—"Dwelling-house," "Tenement," "Land," "Land and tenement," "Tenement (joint)," "Tenement (successive)," "Dwelling-house (successive)," "Shop," "Office," "Chambers," "Studio," &c.

The description in the fourth column should set forth accurately the number or name of the qualifying property, with the street, road, &c., in which it is situated.

With respect to the fourth column, see what has been said as to this under the head of "Counties."

Objections to Votes in Counties and Boroughs.

Any person whose name appears on the register of a county division, may object to the name of any other person upon any list of voters for the same county division. And *mutatis mutandis* the same remark applies to boroughs. But the lodging of objections is a very intricate and technical matter, and is best left to the professional agents of the different political parties.

General Cautions respecting the Registration of Voters.

In all matters connected with the registration of parliamentary voters, alike in counties and boroughs, it cannot be too strongly insisted upon that in the filling up of forms the most punctilious attention must be paid to the requirements specified on the various forms. Claims and objections which are perfectly good so far as essentials are concerned often fail by reason of a trifling omission or mistake in a date, or in the spelling of a proper name.

Persons Disqualified from being on a Register of Voters.

Peers (except Irish peers serving in the House of Commons).

Peers incapacitated by law from voting for members of the House of Commons are not entitled to have their names on the register of voters (*a*).

Females; lunatics; idiots; persons under 21 years of age; aliens.

Persons convicted of perjury or subornation of perjury, or of bribery, treating, or undue influence at any election, or convicted of felony, or outlawed in a criminal proceeding.

Persons holding under a fraudulent right or conveyance.

Only one person can vote for one house or tenement, except in cases of *bonâ-fide* joint occupation.

Metropolitan police magistrates (within their own jurisdiction). The penalty for presuming to do so is £100.

Persons who within 12 months have received parochial relief or alms (other than medical or surgical assistance). The expression "medical or surgical assistance" includes all matters and things supplied by or on the recommendation of the poor-law medical officer at the expense of the poor-rate. (48 & 49 Vict. c. 46, §§ 2, 4.)

(*a*) *Earl Beauchamp* v. *Madresfield*, 42 L. J. C. P., 32.

No person can vote at a county election in respect of property which gives a vote for a borough. (48 Vict. c. 3, § 6.)

Women are not entitled, either at common law or by statute, to vote at elections for members of Parliament (*a*). But they are entitled by statute to vote at elections of local authorities. (45 & 46 Vict. c. 50, § 63; 56 & 57 Vict. c. 73, § 43.)

Where Qualifying Property Not Rated.

The occupier of a dwelling-house which, although rateable, has not been rated, and for which no poor-rate has been paid, is not entitled by such occupation either to the parliamentary or to the municipal franchise (*b*).

Disqualifications for Corrupt and Illegal Practices.

Every person guilty of a corrupt or illegal practice, or of illegal employment, payment, or hiring at an election; and every person who, in consequence of conviction, or of report of any Election Court, or Election Commissioners, under the Act of 1883, or the Municipal Elections Act, has become incapable of voting, is prohibited from voting, and if he votes his vote shall be void. (46 & 47 Vict. c. 51, §§ 36, 37.)

Method and Hours of Voting.

In the case of a poll at an election, the votes are to be given by ballot. (35 & 36 Vict. c. 33, § 2.)

At every parliamentary or municipal election the poll (if any) shall commence at 8 o'clock in the forenoon and be kept open until 8 o'clock in the same day, and no longer. (48 Vict. c. 10.)

No Committee-rooms at Hotels, &c.

Any premises on which the sale by wholesale or retail of any intoxicating liquor is authorised by licence; or any premises where any such is sold or supplied to members of a club, society, or association, other than a permanent political club; or any premises whereon refreshments of any kind, whether food or drink, are ordinarily sold for consumption on the premises; or the premises of any public elementary school which is in receipt of an annual Parliamentary grant, shall not be used as a committee-room for the purpose of promoting or procuring the election of a candidate. (46 & 47 Vict. c. 51, § 20.)

(*a*) *Chorlton* v. *Lings*, 38 L. J. C. P., 25.
(*b*) *Palmer* v. *Wade*, *Wade* v. *Palmer*, L. R. (1894), 1 Q. B., 268.

Election Offences.

The following is a condensed summary of these offences, with the penalties attaching thereto :—

Offences which are "Corrupt Practices."	Penalties.
Bribery.—No gift, loan, or promise of money, or money's worth, must be made to a voter to induce him either to vote or abstain from voting. The offer or promise of a situation or employment to a voter or anyone connected with him, if made with the same object, is also bribery. The consequences are the same whether bribery is committed before, during, or after an election. Giving or paying money for the purpose of bribery is equivalent to the offence itself. A gift or promise to a third person to procure a vote is bribery. Payments for loss of time, wages, or travelling expenses are equal to bribery. (An employer may give reasonable leave of absence for voting purposes without stoppage of pay, provided that all voters in his employment are treated alike.) *Anyone who receives a bribe, or bargains for employment or reward in consideration of his vote, is guilty of bribery.*	To the briber or the person bribed, twelve months' imprisonment, with or without hard labour, or a fine of £200. Deprivation of the right of voting for 7 years. Removal from, and disqualification for, any public office. Payment of cost of an election inquiry in certain cases. If committed by the candidate he also loses his seat, if elected, and is disqualified for ever from representing the constituency. If committed by any agent the election is void, and the candidate is disqualified for 7 years.
Treating.—No meat, drink, entertainment or provision can be paid for or provided by any person, at any time, in order to induce him, or any other person, to vote or abstain from voting. Treating the wives or relations of voters is equally forbidden. The gift of tickets to be exchanged for refreshment is treating. *Both giver and receiver are liable to the same consequences.* The candidate and his agents are not allowed to provide refreshments for workers at the election.	The same as for bribery.

	Penalties.
Undue Influence.—No force, restraint, or fraud may be used to compel an elector to vote or abstain. Using or threatening any spiritual or temporal injury is undue influence. The withdrawal of custom, or a threat to do so, comes under this prohibition. A threat to evict a tenant will also be undue influence.	The same as for bribery.
Personation.—*Applying for* a ballot paper in the name of another person, whether living or dead.	To the offender, two years' imprisonment with hard labour.
Voting twice, or voting for two divisions of a borough, at the same election.	Seven years' incapacity to vote, or hold any public office.
Aiding or abetting personation.	If committed by any agent, the candidate loses his seat.
Forging or counterfeiting a ballot paper.	

Offences which are "Illegal Practices."

Conveyance.—Paying *or receiving* money for conveyance of voters to or from the poll. (Private conveyances lent gratuitously can alone be employed; hackney carriages are prohibited except hired by voters for their own exclusive use.)	A fine of £100. Incapacity to vote for 5 years. If committed by an agent, the election may be rendered void.
Advertising.—Paying money to an elector for exhibiting bills, &c. The *receiver* is also guilty.	
Committee Rooms.—Hiring unauthorised committee rooms. (The election agent *alone* may hire committee rooms, and the number is strictly limited.)	
Voting when prohibited, or inducing a prohibited elector to vote. (Electors employed for payment cannot vote, and an elector so employed in one division of a divided borough is debarred from voting in another.)	
False Statement.—Publishing a false statement of the withdrawal of a candidate.	
Publishing a false statement of fact in relation to the personal character or conduct of a candidate (*a*).	

(*a*) The repetition of such false statement, or a false statement of similar character, may be restrained by injunction (58 & 59 Vict. c. 40, § 3).

Illegal Payment, Employment and Hiring.	Penalty.
Publishing Bills, placards, or posters without the printer's name and address. (The election agent *alone* must issue any printed matter at the election.)	A fine of £100.
Payment for bands of music, torches, flags, banners, ribbons, &c.	
Lending or using, for the conveyance of voters, *vehicles or animals* usually kept for hire.	
Employment of any persons beyond the numbers allowed. (No person can be employed for payment at an election except by the election agent, who is strictly limited as to the numbers.)	
Using a Committee Room in any licensed house, refreshment house, or public elementary school.	

Any of the above offences, if committed by a candidate, election agent (or sub-agent in counties), may render the election void.

Personation defined.

The offence of personation (whether at a parliamentary or municipal election) consists in applying for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name. (35 & 36 Vict. c. 33, § 24.)

Election Agent.

On or before the nomination day a candidate is required to appoint an "election agent," and to give his name and address in writing to the returning officer, who is forthwith to give public notice of the name and address of such election agent.

A candidate may name himself as his election agent. If he does, he will take upon himself all the responsibilities and liabilities of an election agent as well as those of a candidate. (46 & 47 Vict. c. 51, § 24.)

No expense must be incurred by anybody without the election agent's written authority, as the maximum expense allowed by law for each candidate cannot be exceeded without rendering the election void. The person incurring any un-

authorised expense will be personally liable for its repayment, as well as for the consequences of having broken the law.

In counties (not in boroughs) the election agent may appoint a "sub-agent" for each polling district. Any act or default of a sub-agent which, were he election agent, would be an illegal practice or other offence, will entail the same consequences on the candidate and on the sub-agent as if the latter were election agent (§ 25).

The election agent or his sub-agent must appoint every polling agent, clerk, and messenger, and must hire every committee-room. No contract in reference to an election is enforceable against the candidate, unless made by the candidate or the election agent, acting by himself or his sub-agent (§ 27).

Every payment of 40*s.* and upwards made by an election agent or sub-agent must be vouched for by a bill stating particulars and a receipt. But any person may pay *necessary* petty expenses for stationery, postage, telegrams, and the like, provided he obtain the written authority of the election agent and does not pay more than the sum named in that authority (§§ 28, 29).

Every claim against a candidate must be sent to the election agent within 14 days after the declaration of the poll, and an election agent who pays a claim sent in after that time, unless the High Court give leave for such payment, is guilty of an illegal practice (§ 29).

Agents other than the Election Agent.

The word "agents" does not include only the election agent or sub-agents. It includes any person who, with the knowledge of the candidate, has assisted in promoting his election, whether such person is a volunteer, or is paid for his services.

The following acts have been held to be evidence of "agency":—(i) Being a member of the candidate's "committee" (that is—of a comparatively small body entrusted by the candidate with the conduct of the election; not any large body of persons who may choose to call themselves a committee); (ii) Canvassing alone (if the candidate or his authorised agents knew that the person was canvassing); (iii) Canvassing in company with the candidate; (iv) Attending meetings and speaking on behalf of the candidate; (v) Bringing up voters to the poll.

When a person is once clearly proved to have been the agent of the candidate, the latter will be held responsible for the corrupt or illegal acts of that person, though he himself did not authorise them, and even did his best to hinder them.

PART XIV.

LOCAL GOVERNMENT.

SECTION I.—REGISTRATION OF ELECTORS.

The preparation and publication of the registers of persons entitled to vote at Parliamentary and other elections is amongst the duties of Overseers of the Poor, acting under precepts received from the Clerks of the Peace in Counties, and the Town Clerks in Boroughs.

The registers were formerly confined to persons entitled to vote at Parliamentary elections, but by virtue of the Local Government and County Electors Acts of 1888, the registers are now extended so as to comprise County electors [Local Government register], or persons entitled to vote in elections to County Councils; and by the Local Government Act, 1894, so as to comprise Parochial electors entitled to vote in elections to Parochial and District Councils. The registers are subject to revision in each year by Revising Barristers.

The proceedings in these matters are regulated by a number of statutes, of which the principal are the Parliamentary Registration Act, 1843 (6 & 7 Vict. c. 18); County Voters Registration Act, 1865 (28 & 29 Vict. c. 36); Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26); and Parliamentary Registration Act, 1885 (48 & 49 Vict. c. 19).

Besides the registers of electors already referred to, in corporate boroughs it devolves also on the Overseers to make out the lists of burgesses entitled to vote in municipal elections.

Parliamentary Register.

In the Parliamentary registers are comprised the names and qualifications of all persons entitled to vote—whether as owners, occupiers, lodgers, or under the service franchise—in counties or boroughs, as the case may be, at elections to the House of Commons. The qualifications for a County vote will be found set out *ante*, pp. 574—576; and for a Borough vote at pp. 577—579.

Local Government Register.

By the County Electors Act, 1888 (51 Vict. c. 10), it was provided (§ 1) that for the purpose of election to County Councils in England, the burgess qualification created by § 9 of the Municipal Corporations Act, 1882, should extend to every part of a county not within the limits of a borough, and that a person possessing such burgess qualification outside a borough should be entitled to be registered as a county elector in the parish in which the qualifying property is situate. [The burgess qualification is set out *post*, p. 599.]

By the same Act of 1888 (§ 3), every person entitled to be registered as a Parliamentary voter in respect of a ten-pound qualification [for particulars of which see *ante*, p. 575], should also be entitled (i) to be registered as a county elector, and (ii) to be enrolled as a burgess in boroughs within the Municipal Corporations Act, 1882.

Register of Parochial Electors.

And now by the Local Government Act, 1894 (56 & 57 Vict. c. 73, § 44) the "Local Government register" and the "Parliamentary register," so far as they relate to a parish, shall together form the register of the parochial electors of that parish; and any person whose name is in that register shall be entitled to attend a meeting and vote as a parochial elector unless prohibited from voting by any Act of Parliament (sub-section 6). [As to prohibitions from voting, see *ante*, p. 582, under "Disqualifications for Corrupt and Illegal Practices."]

A person, if duly qualified, may be registered in more than one register of parochial electors (sub-§§ 4 & 5).

By an Act of 1897, any person who has entered into residence on or before 25th March in any year shall, if otherwise qualified, be eligible for election at the parish council elections of the succeeding year, notwithstanding that the period of his residence shall be under one year (60 Vict. c. 1, § 1).

Married Women Qualified as Parochial Electors.

The Act of 1894 provided (§ 43) that for the purposes of the Act a woman shall not be disqualified by marriage for being on any local government register of electors, or for being an elector of any local authority (*a*), provided that a husband and wife shall not both be qualified in respect of the same property (56 & 57 Vict. c. 73, § 43).

(*a*) But a married woman is not entitled to be placed on the register of parochial electors *in respect of the ownership of property* (*Drax* v. *Ffooks*, W. N. [1895] 147).

SECTION II.—COUNTY COUNCILS.

Constitution of County Councils.

County Councils were instituted by the Local Government Act, 1888 (51 & 52 Vict. c. 41), which fulfilled only part of its title, being amended by Parliament so as to leave it simply a measure of *County* government. It has now been supplemented by the Local Government Act, 1894, constituting District and Parish Councils (see *post*, under those headings).

By the Act of 1888, a County Council was established in every administrative County, to which should be entrusted the management of the Administrative and Financial business of such County. It consists of the Chairman, Aldermen, and Councillors (§ 1).

The Council is to be constituted and elected, and is to conduct its proceedings in all respects in the same way as the Council of a Borough divided into Wards, except that the Councils are to be elected for 3 years, and all the Councillors, but not the Aldermen, are to retire together. Each County is to be divided into Electoral Divisions, but no Electoral Division except in the Metropolis is to return more than 1 Councillor. The qualification of the Members is practically the same as in Municipal Boroughs, with the addition that Peers, Clergy, and Dissenting Ministers are eligible (§ 2).

The Electors are in Boroughs the Burgesses; and in Counties, Electors made such by the County Electors Act, 1888 (51 & 52 Vict. c. 10).

The County qualification is virtually the same as the Municipal qualification already existing in Boroughs. The Chairman holds office for one year. There may be a Vice-Chairman. (51 & 52 Vict. c. 41, § 2.)

When the elections to the first Councils were held it was a disputed question whether women were eligible candidates under the Act; and several women who were candidates in London having been returned as elected, the unsuccessful competitor of one of them petitioned against her return. It was held by the Court that the respondent (the lady candidate) was not capable of being elected a county councillor (*a*).

It has also been decided that an elector, although duly registered in more than one electoral division of the same county, is not entitled to vote at the same election in more than one division of the same county (*b*).

(*a*) *Beresford-Hope* v. *Lady Sandhurst*, 23 L. R. Q. B. D., 79.
(*b*) *Knill* v. *Towse*, 24 L. R. Q. B. D., 697.

By the County Councils (Elections) Act, 1891, amending § 75 of the Principal Act, the ordinary day of election of county councillors shall be such day between the first and eighth day of March as the County Council may fix, and, if no date is so fixed, shall be the eighth day of March; and the ordinary day of retirement of county councillors shall be the eighth day of March in every third year, on which day the county councillors then in office shall retire together, and their places shall be filled by the newly-elected councillors, who shall come into office on that day. (54 & 55 Vict. c. 68, § 1.)

Powers of County Council.

The business transferred by the Local Government Act, 1888, to the County Councils is the Administrative business formerly undertaken by the County Justices, exclusive of their Judicial business. The business transferred was defined as "all business done by the Quarter Sessions or any Committee appointed by the Quarter Sessions, in respect of the several matters following" (51 & 52 Vict. c. 41, § 3):—

1. The making, assessing, and levying of county, police, hundred, and all rates, and the application and expenditure thereof, including the county stock or county fund, and the preparation and revision of the basis or standard for the county rate;
2. The borrowing of money;
3. The passing of the accounts of the county treasurer;
4. Shire halls, county halls, assize courts, judges' lodgings, lock-up houses, court houses, justices' rooms, police stations, and county buildings, works, and property;
5. The licensing of houses and places for music or dancing, and the granting of licences under the Racecourses Licensing Act, 1879;
6. The management and visitation of asylums for pauper lunatics;
7. The maintenance of and contribution to reformatory and industrial schools;
8. Bridges and roads repairable with bridges;
9. The fees and costs to be allowed to any inspector, analyst, or county officer, other than the clerk of the peace and clerks of the justices;
10. The appointment, removal, and determination of salaries, of the county treasurer, county surveyor, public analysts, any officer under the Explosives Act,

1875, and any county officers other than the clerk of the peace and clerks of the justices ;

11. The salary of any county coroner, the fees, allowances, and disbursements allowed to such coroner, and the division of the county into coroners' districts ;
12. The division of the county into polling districts for parliamentary elections, the appointment of places of election, the places of holding courts for the revision of lists of voters, and the costs of registration ;
13. The execution of the Acts relating to contagious diseases of animals, to destructive insects, to fish conservancy, to wild birds, to weights and measures, and to gas meters, and of the Local Stamp Act, 1869 ;
14. Any matters arising under the Riot (Damages) Act, 1886 ;
15. The registration of rules of scientific societies under the Act 6 & 7 Vict. c. 36 ; the registration of charitable gifts under 52 George III. c. 102 ; the certifying and recording of places of religious worship under 52 George III., c. 155 ; the confirmation and record, under 3 & 4 Vict. c. 110, of the rules of loan societies.

The Act also transferred to the County Council the business of Justices out of Session—

16. In respect of the licensing of houses or places for the public performance of stage plays, and
17. In respect of the execution as local authority of the Explosives Act, 1875. (§ 7.)

Under certain circumstances Powers conferred by Local Acts may be transferred to a County Council. (§ 4.)

Coroners will no longer be elected by the Freeholders of the County, but by the County Council ; or where a County is divided, by a joint Committee representing each division. (§ 5.)

A County Council may purchase or take over existing Bridges and erect New Bridges. (§ 6.)

The jurisdiction of the Justices in respect of Appeals against Rates remains untouched. (§ 8.)

The management and control of the Police is vested in the Quarter Sessions and County Council, through a standing joint Committee chosen by the two bodies. (§ 9.)

The Local Government Board may, from time to time, by Provisional Order, to be confirmed by Parliament, transfer to a County Council any Powers, Duties, and Liabilities of the Privy Council, a Secretary of State, the Board of Trade, the

Local Government Board, or the Education or any other Government Department, which appears to relate to matters arising within the County and to be of an administrative character. (§ 10.)

The maintenance, repair, improvement, and enlargement of Main Roads, and of Bridges belonging thereto, is now the duty of the County Council, but any Urban Authority may claim the right to control roads within its own district. (§ 11.) The roads in the Isle of Wight and in South Wales are the subject of special provisions. (§§ 12, 13.)

A County Council may take the requisite steps to enforce the Rivers Pollution Act, 1876, as if it were a Sanitary Authority. (§ 14.)

A County Council has the powers of a Municipal Corporation for the purpose of opposing Bills in Parliament; but it has not the same (or any) powers to promote Bills in Parliament. (§ 15.)

A County Council has the same power to make bylaws in relation to its County that a Municipal Corporation has under § 23 of the Municipal Corporation Act, 1882. Such bylaws will be framed in the manner prescribed by § 187 of the Public Health Act, 1875. These bylaws will only be in force in the County and not in any Borough. (§ 16.)

Medical Officers of Health may be appointed by a County Council in concert with District Councils in its County. (§§ 17, 18.)

Every Medical Officer for a District in a County is to send a copy of his Report to the County Council. If that Council should think that the enforcement of the Public Health Act, 1875, in any part of its County has been neglected it may make a complaint to the Local Government Board. (§ 19.)

Powers under later Acts.

By later Acts additional powers have been given to County Councils—for instance,

By the Technical Instruction Act, 1889, they were empowered to supply, or aid in the supply of, technical or manual instruction (see *post*, p. 609).

Under the Allotments Act, 1890 (53 & 54 Vict. c. 65), the powers of Sanitary Authorities to provide allotments may in certain circumstances be transferred to County Councils (but see now the powers given to Parish Councils, *post*, p. 624); and by the Small Holdings Act, 1892 (55 & 56 Vict. c. 31), they have been empowered to acquire land for the purpose of providing small holdings for persons wishing to buy and cultivate the same.

By other Acts of 1892 County and Borough Councils were authorised to purchase franchises of weights and measures (55 & 56 Vict. c. 48), and to make contributions towards the expense of inquiries into local charities instituted by the Charity Commissioners (55 & 56 Vict. c. 15).

By the Isolation Hospitals Act, 1893, County Councils are empowered to promote the establishment of hospitals for the reception of patients suffering from infectious diseases (56 & 57 Vict. c. 68).

By the Local Government Act, 1894, various duties are imposed on County Councils in regard to bringing that Act (for establishing Parish and District Councils) into operation; and County Councils are also invested with very large powers to deal with any difficulties which may arise with respect to the holding of a first Parish Meeting or the first election of Parish Councillors. These powers may be put in force where no election has been held, or an election appears defective, or where the first Parish or District Council has not been properly constituted by the election of an insufficient number of members or otherwise; and an order of the Council made under those powers may, where necessary, vary the provisions of the Act (56 & 57 Vict. c. 73, § 80).

Financial Relations between Exchequer and County.

After the financial year ending March 31, 1889, the Inland Revenue Commissioners were to constitute at the Bank of England a special account to be called the Local Taxation Account, made up of the proceeds of the Duties collected by the Commissioners for various Licences, such as Licences for the Sale of Intoxicating Liquors and for carrying on such trades as under the existing law require Inland Revenue Licences.

The amounts thus brought together, after they have been certified by the Commissioners as arising in each separate County, are now to be paid under the direction of the Local Government Board to the Council of such County; or by Order in Council the power to levy the above-mentioned Licences may be conferred upon the County Councils.

The Commissioners are also to pay into the Local Taxation Account four-fifths of one-half of the proceeds of the Probate Duties collected by them, and this grant is to be distributed among the Counties in the same proportion as Grants hitherto made out of the Exchequer in aid of Local Rates (51 & 52 Vict. c. 41, §§ 20—22).

Receipts by a County Council in respect of Licence Duties

and Probate Duty Grant are to be carried to a separate account to be called the Exchequer Contribution Account, which is to be distributed according to an extremely complex system which cannot be summarised in a few words (§ 23).

In substitution for Annual Grants out of the Exchequer in aid of Local Rates the County Councils are to pay out of the County Fund and charge to the Exchequer Contribution Account the following sums :—

(i) Sums in aid of the remuneration of teachers in Poor-Law Schools and Public Vaccinators.
(ii) School fees paid for Pauper Children sent from a Workhouse to a Public Elementary School outside.
(iii) Half the salary of certain Medical Officers of Health and Inspectors of Nuisances.
(iv) Remuneration of Registrars of Births and Deaths.
(v) Four shillings a week for each Pauper Lunatic chargeable to the County.
(vi) Four shillings a week for each Pauper Lunatic chargeable to a Union wholly or partly within the County.
(vii) Four shillings a week for each Pauper Lunatic chargeable to a Borough Council.
(viii) Compensation payable to the Clerk of the Peace.
(ix) Half the cost of the Pay and Clothing of the County Police.
(x) A similar amount to each Borough Council which maintains its own Police.
(xi) A certain sum for the Metropolitan Police, if there is within the County a rate levied for the Metropolitan Police (§ 24).

The Secretary of State has jurisdiction over the efficiency of a County Police Force by being able to withhold his Certificate of its efficiency, in which case the Force loses its contribution from the County Fund (§ 25).

The County Council is to grant to the Guardians of every Poor Law Union an annual sum for costs of Officers and of District Schools (if any) (§ 26).

Application to Boroughs.

Certain Boroughs named in the Act were made Counties in themselves, and the Mayor, Aldermen, and Burgesses thereof are now subject to all the powers and liabilities of a County Council, except that for Assize purposes they are to form part of the Counties in which they are situate (§ 31).

These new County Boroughs are the following :—

Barrow	Gateshead	Plymouth
Bath	Gloucester	Portsmouth
Birkenhead	Great Yarmouth	Preston
Birmingham	Halifax	Reading
Blackburn	Hanley	Rochdale
Bolton	Hastings	Saint Helens
Bootle-cum-Linacre	Huddersfield	Salford
Bradford	Ipswich	Sheffield
Brighton	Kingston-upon-Hull	Southampton
Bristol	Leeds	South Shields
Burnley	Leicester	Stockport
Bury	Lincoln	Sunderland
Canterbury	Liverpool	Swansea
Cardiff	Manchester	Walsall
Chester	Middlesbrough	West Bromwich
Coventry	Newcastle-upon-Tyne	West Ham
Croydon	Northampton	Wigan
Derby	Norwich	Wolverhampton
Devonport	Nottingham	Worcester
Dudley	Oldham	York
Exeter		

The County Boroughs are clothed with all the powers conferred by the Act on the Councils of Counties, but their position as Municipal Corporations is not interfered with (§ 34).

In the case of Quarter Sessions Boroughs of a population of 10,000 or upwards, no powers were to be transferred to the County Council, nor was their general status altered, but they are to form part of and to contribute to the County (§ 35).

Where a Borough has a separate Commission of the Peace, whether a Quarter Sessions Borough or not, the County Council has the same powers as in the rest of the County, but the powers relating to Pauper Lunatics were transferred to the Borough Council from the Quarter Sessions (§ 36).

Quarter Sessions Boroughs with a population under 10,000 were separately dealt with, their powers as to Pauper Lunatics, Coroners, Analysts, Reformatories, Fish Conservancy, Explosives, Highways, and Locomotives being transferred to the County Council (§ 38).

The Metropolis.

The Metropolis was formed into a County by itself under the name of the County of London, taking in parts of Middlesex, Surrey, and Kent, within the area of the late Metropolitan Board of Works, of which Board the London County Council is in law the successor. The special powers and privileges of the Corporation of London (*i.e.*, the City of London) remain substantially unaffected by the Act (§§ 40—45).

Property and Funds of County Councils.

Each County Council is a body corporate, with perpetual succession and a common seal (§ 79).

A County Council may acquire lands, and for that purpose has the powers given by the Public Health Act, 1875 (§ 65).

A Council is also empowered to borrow (i) for consolidating County debts; (ii) for purchasing land or buildings; (iii) for permanent works, the cost of which may be spread over a term of years; (iv) for making advances in aid of emigration; (v) for any purpose for which Quarter Sessions or County Councils are authorised to borrow (§ 69). County Stock may be created and dealt with in accordance with regulations prescribed by the Local Government Board (§ 70).

The accounts of County Councils are to be made up in prescribed form and audited by the auditors of the Local Government Board, the local financial year being the twelve months ending March 31st; and at the commencement of every such year every County Council is to prepare a Budget (§§ 71, 73, 74).

That Board controls all borrowing by Local Authorities on the security of Local Property (§ 72).

Joint Proceedings of Councils and Magistrates.

A Standing Joint Committee of Quarter Sessions and the County Council is to be appointed to deal with matters relating to the Police, the Clerk of the Peace, and other matters requiring their joint decision (§ 30); and they may also appoint Joint Committees for other purposes (§ 81).

Duties of County Councils under Local Government Act, 1894.

For the purpose of carrying the Act of 1894 into effect in the case of (i) every parish and rural sanitary district situate partly within and partly without an administrative county; and (ii) every parish situate partly within and partly without a sanitary district; and (iii) every rural parish which has a population of less than two hundred; and (iv) every rural sanitary district which has less than five elective guardians capable of acting and voting as members of the rural sanitary authority of the district; and (v) every rural parish which is co-extensive with a rural sanitary district; every County Council has to take action for securing that (1) the whole of each parish, and (unless the County Council otherwise direct) the whole of each rural district shall be within the same county; (2) the whole of each parish shall (unless the County Council otherwise direct) be within the same county district; and (3) every rural district which will have less than five

elected councillors shall (unless the County Council otherwise direct) be united to some neighbouring district (§ 36, sub-§ 1).

Where a rural parish is co-extensive with a rural sanitary district, then, unless the County Council otherwise direct, a separate election of a parish council shall not be held for the parish, but the District Council shall, in addition to their own powers, have the powers of, and be deemed to be, the parish council (§ 46, sub-§ 4).

Every County Council shall, within two years after the passing of the Act, or within such further period as the Local Government Board may allow, make such orders as they deem necessary for the purpose of bringing the Act into operation, and after the expiration of the said two years or further period their powers for that purpose are to be transferred to the Local Government Board (§ 36, sub-§ 13).

Where parishes are grouped, the grouping order is (amongst other things) to make provision for the name of the group; for the parish meetings in each of the grouped parishes; for the election of separate representatives of each parish on the parish council; and for the application of the provisions of the Act with respect to the appointment of trustees and beneficiaries of a charity, so as to preserve the separate rights of each parish (§ 38, sub-§§ 1—3).

The parish meeting of any parish may apply to the County Council for a grouping order respecting that parish, and, if it has a less population than two hundred, for a parish council; and the County Council may, on the application of the council for any group of parishes or of the parish meeting for any parish included in a group of parishes, make an order dissolving the group (§ 38, sub-§§ 4, 5).

Where the population of a parish not having a separate parish council increases so as to justify the election of such council, the parish meeting may petition the County Council to order the election of a parish council in that parish; and where the population of a parish, according to the last published census for the time being, is less than two hundred, the parish meeting may petition the County Council to order the dissolution of the parish council (§ 39).

The first elections under the Act were to be held on 8th November, 1894, or such later date or dates in 1894 as should be fixed by the Local Government Board; the persons elected to come into office on the second Thursday next after their election, or such other day (not more than seven days earlier or later) as should be fixed by the rules made by the Local Government Board.

SECTION III.—MUNICIPAL CORPORATIONS.

Municipal Corporations.

The Corporations exercising the governing powers of towns having municipal charters—or, as they are sometimes termed, corporate boroughs—are of ancient institution, though from time to time charters are granted incorporating new towns of growing importance. Large reforms have been made by legislation in recent years in the administration of corporate boroughs—notably by the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), and the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 51).

A Municipal Corporation is described in law as consisting of a Mayor, Aldermen, and Burgesses, under which collective designation it has a perpetual succession.

Municipal Charters are granted by the Crown in accordance with precedents, which go back with tolerable uniformity to the reign of James I. The application for a Charter has to be made in the form of a petition to the Crown, which is referred to the Privy Council. The procedure is prescribed partly by the Municipal Corporations Act, 1882 (§§ 210—218), and as to other matters by the Privy Council Office.

The Mayor is elected by the Council annually on November 9, usually out of their own body; and therefore in most cases a Mayor will, immediately preceding his election, have been either an Alderman or a Councillor. A Mayor is elected for one year, but a retiring Mayor may be re-elected. A person appointed Mayor who refuses to serve may be liable to a penalty not exceeding £100. If the office of Mayor becomes vacant a new one must be elected within 10 days, but he will hold office only for the remainder of the current municipal year. The Council may award him a salary. The Mayor is the chief civil functionary in his borough, and during his year of office and the next following year he is an *ex-officio* Justice of the Peace for borough business. He presides over all meetings of the Council. If ill or unavoidably absent he may appoint an Alderman or Councillor as his deputy. (45 & 46 Vict. c. 50, §§ 15, 40, 61, 67.)

Aldermen.

On November 9 the Town Council meet to elect Aldermen, who in number are one-fourth the total number of the Council. One-half of the Aldermen, being those who have held office for the longest time, go out of office every third year. A retiring

Alderman may be re-elected, or new candidates for the office may be chosen from the Council or from the Burgesses who are qualified to be elected Councillors. Every Alderman not a member of the Council when elected Alderman becomes a member of the Council *ex-officio*. (45 & 46 Vict. c. 50, §§ 14, 16, 36, 39, 60.)

Town Councillors.

The Burgess Roll comes into operation on November 1, on which day in every year (or on the 2nd if the 1st be a Sunday) an election of Town Councillors takes place.

The number of these varies in different towns, depending (originally) in some measure on the population. In all but the smallest boroughs the borough is divided into wards, each ward electing so many Councillors. A candidate for the office of Councillor must be on the Burgess Roll for the current year, and must possess a property or rating qualification varying in different places according to the number of the wards.

In a borough divided into 4 or more wards he must be possessed of property to the amount of £1,000, or be rated to the Poor Rate at not less than £30. In boroughs divided into less than 4 wards the figures are £500 and £15 respectively. One-third of the Councillors go out of office annually, which is equivalent to saying that the office is tenable for 3 years. (44 & 45 Vict. c. 50, §§ 11, 12, 13, 50—59.)

The following are disqualified from being elected: An elective auditor, or revising assessor; the holder of any office of profit (other than that of Mayor or Sheriff) in the gift of the Council; persons in holy orders; the regular ministers of Dissenting congregations; a person having directly or indirectly, by himself or partner, any share or interest in any contract or employment with the Council (45 & 46 Vict. c. 50, § 12). A conviction for bribery also disqualifies. (47 & 48 Vict. c. 70, § 2.)

Burgesses.

Women (being unmarried or widows) as well as men (not being aliens or otherwise disqualified) may be burgesses; but a person is not qualified unless he (1) is of full age; and (2) is on July 15 in any year, and has, during the whole of the then last preceding twelve months, been in occupation, joint or several, of a house or other building in the borough; and (3) has during the twelve months resided in the borough or within seven miles thereof; and (4) has been rated to the poor rate in respect of the qualifying property during the twelve months; and (5) has, on or before July 20, paid all such rates as have

become payable by him in respect of the qualifying property up to the last preceding January 5. (45 & 46 Vict. c. 50, § 9.)

A burgess is not disqualified by letting his house as a furnished dwelling-house for a period not exceeding four months out of the twelve, without residing within the seven miles. (48 Vict. c. 9, § 2.)

Receipt of parochial relief or other alms will disqualify, except that a person will not be disqualified to be enrolled as a burgess by reason only that he has received medical or surgical assistance from municipal charities or at the expense of the poor rate, or that his child has been admitted to any endowed school. (45 & 46 Vict. c. 50, § 33.)

A married woman, although an inhabitant householder and paying rates, and living apart from her husband, is not entitled to be a burgess (*a*).

Like a Parliamentary voter, a burgess must have his name entered on a list called the Burgess Roll, after running the gauntlet of a scrutiny into his position closely resembling that through which a Parliamentary voter has to pass on the Parliamentary register. (45 & 46 Vict. c. 50, §§ 44—49.)

By an Act of 1893, the police may now vote at municipal and other similar elections as well as at Parliamentary elections. (56 Vict. c. 6.)

Officers of a Corporation.

Such officers as the Town Clerk, the Borough Surveyor, the Borough Treasurer, and the Rate Collector are appointed in the exclusive discretion of the Corporation. The Corporation also appoints the Medical Officer of Health and the Inspector of Nuisances; but if the Local Government Board pays half the salary of either of these two last-named officers, it claims a voice in their appointment and removal.

Municipal officers exercising judicial functions, such as the Recorder, the Justices of the Peace, and the Stipendiary Police Magistrate (where there is one) are appointed by the Crown.

Legal Powers of a Municipal Corporation.

A Municipal Corporation exercises exclusive authority within the limits of the borough in regard to all such matters as the public health, highways, bridges, paving, lighting, watering, new streets, buildings, infectious diseases, public markets, common lodging-houses, public baths and wash-houses. In certain cases, and in virtue of special Local Acts, Corporations manage piers, picture galleries, gas and water-works, &c.

(*a*) *Reg.* v. *Harrald*, L. R. 7 Q. B., 361.

The administration of justice, including the control of the police, is also in certain cases, to some extent, in the hands of a Municipal Corporation, where there is a separate Commission of the Peace for the Borough.

Corrupt and Illegal Practices at Municipal Elections.

These are chiefly dealt with in the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), to which the reader is referred for full particulars, in addition to the substance of some of the more important provisions of the Act given in the subjoined paragraphs.

Punishment of Corrupt Practices.

A person who commits any corrupt practice (as minutely defined in the Act) in reference to a municipal election shall be guilty of the like offence, and shall on conviction be liable to the like punishment, and subject to the like incapacities (*a*), as if the corrupt practice had been committed in reference to a Parliamentary election. (47 & 48 Vict. c. 70, § 2.)

Incapacity of Candidate guilty of Corrupt Practice.

Where, upon the trial of an election petition respecting a municipal election for a borough, or ward of a borough, it is found by the report of an Election Court, made in pursuance of § 93 of the Municipal Corporations Act, 1882, that any corrupt practice, other than treating and undue influence, has been proved to have been committed in reference to such election, by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election, by any candidate at such election, that candidate shall not be capable of ever holding a corporate office in the said borough; and, if he has been elected, his election shall be void, and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice.

Upon the trial of an electin petition respecting a municipal election, if the Election Court shall report that any candidate at such election has been guilty, by his agents of a corrupt practice in reference to such election, that candidate shall not be capable of being elected to or holding any corporate office in the said borough, during a period of 3 years from the date of the report; and if he has been elected his election shall be void (§ 3).

(*a*) See *ante*, pp. 582-584.

Certain Expenditure to be Illegal Practice.

No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made—

(*a*) on account of the conveyance of electors to or from the poll, whether for the hiring of horses or carriages, or for railway fares, or otherwise ; or

(*b*) to an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice ; or,

(*c*) on account of any committee room in excess of the number allowed by the Act (that is to say), if the election is for a borough, one committee room for the borough, and, if the election is for a ward, one committee room for the ward ; and, if the number of electors in such borough or ward exceeds 2000 one additional committee room for every 2000 electors and incomplete part of 2000 electors, over and above the said 2000 (§ 4).

Punishment on Conviction of Illegal Practice.

A person guilty of an illegal practice in reference to a municipal election, shall, on summary conviction, be liable to a fine not exceeding £100, and be incapable during a period of 5 years from the date of his conviction of being registered as an elector, or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act), held for or within the borough in which the illegal practice has been committed (§ 7).

Employment of Carriages and Horses kept for Hire.

A person shall not let, lend, or employ for the conveyance of electors to or from the poll at a municipal election, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same ; and if he does, he shall be guilty of illegal hiring ; but nothing in the Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of conveying him or them to or from the poll (§ 10).

Certain Expenditure to be Illegal Payment.

No payment or contract for payment shall, for the purpose

of promoting or procuring the election of a candidate at a municipal election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction (§ 12).

Punishment of Illegal Payment, Employment, or Hiring.

A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding £100. Where an offence of illegal payment, employment, or hiring is committed by a candidate, or with his knowledge and consent, such candidate shall be guilty of an illegal practice (§ 17).

Use of certain Premises for Committee Rooms or Meetings to be Illegal Hiring.

Any premises (i) which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises, or (ii) where any intoxicating liquor is supplied to members of a club, society, or association, or any part of such premises, shall not for the purpose of promoting or procuring the election of a candidate at a municipal election, be used either as a committee room or for holding a meeting; and if any person hires or uses any such premises or any part thereof in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises, or part thereof, if he knew it was intended to use the same in contravention of this section, shall also be guilty of illegal hiring.

Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid (§ 16).

Prohibition of Persons guilty of Offences from Voting.

Every person guilty of a corrupt or illegal practice, or of illegal employment, payment, or hiring at a municipal election, is prohibited from voting at such election; and, if any such person votes, his vote shall be void, and shall be struck off on a scrutiny (§ 22),

SECTION IV.—BOARDS OF GUARDIANS AND DISTRICT COUNCILS.

(i) BOARDS OF GUARDIANS.

By the operation of the Local Government Act, 1894 (56 & 57 Vict. c. 73), the constitution of Boards of Guardians —to whom is remitted the relief of the poor, either by *indoor* relief in the workhouse, or by *outdoor* relief to applicants living in their own homes — throughout the country has been materially altered :—

(i) There will now be no *ex-officio* or nominated Guardians.

(ii) All existing qualifications for Guardians, whether of property or sex, are abolished ; the only qualification now required being that the candidate should be a parochial elector of, or should have resided for twelve months preceding the election in, some parish in the Union ; or in a borough should be qualified to be a Councillor of the borough.

(iii) Guardians are to be elected by the parochial electors.

(iv) Each elector is to give one vote only for each Guardian.

(v) The term of office is to be three years, and in ordinary cases one-third of the members will retire every year. The County Council may make rules for regulating the method of retirement ; or they may, on the application of any Board of Guardians, provide for the whole of the members retiring simultaneously at the end of three years ; and where Boards of Guardians at present go out of office simultaneously at the end of every third year the practice may be continued.

(vi) A Board of Guardians may elect a Chairman and a Vice-Chairman and two other members from persons qualified to be Guardians outside their own body ; and at the first election such additional members are to be selected from past *ex-officio* or nominated Guardians.

(vii) The County Council may fix or alter the number of Guardians to be elected for each parish in their county.

(ii) URBAN DISTRICT COUNCILS.

Urban Sanitary Districts (except County Boroughs) are in future to be called Urban Districts, and for each district there is to be a District Council.

The Town Council of a Borough other than a County Borough will be the District Council for the Borough.

In any Urban District other than a municipal borough the existing Urban Sanitary Authority will be the District Council,

but its constitution and mode of election is to correspond with that of Boards of Guardians.

(iii) RURAL DISTRICT COUNCILS.

Rural Sanitary Districts will in future be called Rural Districts, and in each district there will be a District Council.

The Rural District Council will be a body corporate, distinct from the Guardians, and is to consist of Councillors elected for the several parishes, who will sit at the Board of Guardians as the Guardians of the parishes. The constitution and mode of election will be that provided for Guardians.

Powers of Rural District Council.

The Rural District Councils are to have the powers—

(1) Of the Rural Sanitary Authority ;

(2) Of Highway Boards and Surveyors of Highways ;

(3) Such powers of urban authorities under Public Health Acts or other Acts as the Local Government Board may assign to them ;

(4) The duty of protecting all public rights of way, and of preventing their closure or obstruction, and of preventing any unlawful encroachment on any roadside waste ;

(5) Power to aid in preventing the extinction of rights of common and to regulate the use of commons ;

(6) The powers of Justices in relation to (i) the licensing of gang masters; (ii) the grant of pawnbrokers' certificates ; (iii) the licensing of dealers in game ; (iv) the grant of certificates for passage brokers and emigrant runners ; (v) the abolition of fairs and alteration of days for holding fairs ; (vi) the execution of the Acts relating to petroleum and infant life protection ; (vii) the powers of licensing of knackers' yards.

The duties under (4), (5), and (6) are assigned to County Boroughs and Urban District Councils, as well as Rural District Councils.

Chairman of District Council.

The Chairman of every District Council, whether Urban or Rural, will, by virtue of his office, be a Justice of the Peace.

Extension of Powers in London and Urban Districts.

On the application of any Sanitary Authority in London, or of any County Borough or of the Council of any municipal borough or other Urban District, the Local Government Board may make an Order applying to the borough or district any of the powers of Parish Councils.

SECTION V.—PUBLIC ELEMENTARY SCHOOLS.

Elementary Education Acts.

Under these Acts (1870 to 1891), the whole of England is divided for school board purposes into "school districts"; and with certain local exceptions, every borough, and every parish outside a borough, is such a district.

At a school board election in boroughs, the voters are all persons whose names are on the burgess roll; and in parishes not within the Metropolis, and not municipal boroughs, the voters are the ratepayers. No qualification for membership is prescribed. Women are eligible, and are often elected. The members are elected triennially, in November.

Schools maintained by school boards are required to be "public elementary" schools, as defined by the Act of 1870, and the payment by each scholar is not to exceed 9d. a week.

The Act of 1870 provides that it shall not be required as a condition of admittance into any public elementary school that any child shall attend or avoid attending any Sunday school or place of religious worship; or that he shall attend any religious instruction in the school or elsewhere, except with the assent of his parents; or that he shall attend the school on any day set apart for religious observance by the religious body to which his parents belong. Any religious instruction or observance in a public elementary school is to be at a fixed time, either at the beginning or end of school-time; and it is also expressly provided by the Act that no catechism or formulary distinctive of any particular denomination may be taught in a public elementary school.

Only public elementary schools, as thus constituted, whether under school boards or voluntary committees, are allowed to participate in the Parliamentary grants for elementary education administered by the Education Department; and in the case of the board schools, all cost of providing and maintaining the schools over and above the school pence and the Parliamentary grant has to be provided by the school boards in their several localities out of the local rates.

School boards are also empowered to maintain, or to contribute to the maintenance of, certified industrial schools.

By the Elementary Education Act, 1891 (54 & 55 Vict. c. 56), the funds available for public elementary education, whether in voluntary schools or under school boards, were largely increased, with the object that, as far as practicable, and subject to the provisions of the Act, education in public elementary schools in England and Wales should be free.

The Act provided that after the commencement of the Act there should be paid, out of moneys provided by Parliament, and at such times and in such manner as might be determined by regulations of the Education Department, a grant (in the Act called a free grant) in aid of the cost of elementary education in England and Wales at the rate of ten shillings a year for each child of the number of children over three and under fifteen years of age in average attendance at any public elementary school in England and Wales (not being an evening school), the managers of which should be willing to receive the same, subject to the conditions of the Act.

By the Elementary Education Act, 1876 (39 & 40 Vict. c. 79), any parent not causing his child to receive efficient instruction in reading, writing, and arithmetic, is liable to penalties; and all persons are prohibited, under penalty, from taking into their employment any child who is under ten years of age [now eleven, see below], or who, being over that age, has not obtained a certificate of proficiency in reading, writing, and arithmetic, or of previous due attendance at school, unless the child is employed as a "half-timer" under the Factory Act or the by-law of a local authority.

By an Act of 1893 the age at which a child may obtain total or partial exemption from the obligation to attend school was raised from ten to eleven, and every by-law providing for such exemption is to be construed as if eleven years of age were mentioned therein. (56 & 57 Vict. c. 51.)

Voluntary Schools Act, 1897.

By this Act (60 Vict. c. 5) it is provided that for aiding voluntary schools (which are defined as public elementary schools not provided by a school board), there shall be annually paid out of moneys provided by Parliament an aid grant, not exceeding in the aggregate 5s. per scholar for the whole number of scholars in those schools; which grant is to be distributed by the Education Department to such voluntary schools, and in such manner and amounts, as the Department thinks best for the purpose of helping necessitous schools and increasing their efficiency, due regard being had to the maintenance of voluntary subscriptions.

Associations of schools may be constituted in such manner, in such areas, and with such governing bodies representative of the managers, as are approved by the Education Department, and a share in the aid grant may be allotted for its schools to each of such associations while so approved.

The Education Department may allot the aid grant at

different rates per scholar for town and country schools, respectively, for the scholars in the schools of such associations.

The share so allotted to each such association is to be distributed by the Department after consulting the governing body of the association, and in accordance with any scheme prepared by that body which the Department approves.

SECTION VI.—LIBRARY AUTHORITIES.

Public Libraries Act, 1892.

By this Act (55 & 56 Vict. c. 53), the law relating to public libraries was consolidated and amended, the previous Library Acts (1855 to 1890) being thereby repealed; and it was provided (§ 1) that every urban district, and every parish in England and Wales which is not within an urban district shall be a library district.

No rate or addition to a rate is to be levied for the purposes of the Act for any one financial year in any library district to an amount exceeding one penny in the pound, and the Act may be adopted for any district subject to a condition that the maximum rate in any year shall not exceed one halfpenny or shall not exceed three-farthings in the pound (§ 2).

The Act does not take effect for any library district unless adopted in manner provided by the Act (§ 3).

The Library Authorities may provide not only public libraries, but museums, schools for science, art galleries, and schools for art. No charge is to be made for admission to a library or museum, or, in the case of a lending library, for the use thereof by the inhabitants of the district (§ 11).

Libraries Offences Act, 1898.

Under this Act—which applies not only to libraries established under the Public Libraries Acts, but also to any library maintained by an industrial and provident society, a friendly society, or a registered trade union—any person who disturbs a reader in any such library by disorderly conduct, abusive language, or gambling, or who, after proper warning, persists in remaining after closing hours, is to be liable on summary conviction to a fine of 40s. (61 & 62 Vict. c. 53.)

SECTION VII.—TECHNICAL INSTRUCTION UNDER LOCAL AUTHORITIES.

By the Technical Instruction Act, 1889 (52 & 53 Vict. c. 76) new facilities were created for the provision of "technical or manual instruction," under the control of "local authorities"—namely, the Council of any county or borough, and any Urban Sanitary Authority (§ 4). The local authority is empowered, out of a rate to be raised for the purpose, not exceeding 1*d.* in the pound, to "supply or aid the supply of technical or manual instruction"; and on the request of a school board, or of any other managers of a school or institution within its district in receipt of aid from the Department of Science and Art, to make provision in aid of the technical and manual instruction for the time being supplied in schools or institutions within its district (§ 1).

"Technical instruction" is defined to mean "instruction in the principles of science and art applicable to industries, and in the application of special branches of science and art to specific industries or employments," including "instruction in the branches of science and art with respect to which grants are for the time being made by the Department of Science and Art, and any other form of instruction (including modern languages and commercial and agricultural subjects) which may for the time being be sanctioned by that Department." "Manual instruction" is defined to be "instruction in the use of tools, processes of agriculture, and modelling in clay, wood, or other material" (§ 8).

By an amending Act of 1891 (54 Vict. c. 4) a local authority is now enabled to make provision in aid of technical or manual instruction in a school or institution outside its district, in cases where similar provision cannot be so advantageously made within the district.

By another Act of 1891 (54 & 55 Vict. c. 61) the managers of any school for science and art, or of a literary or scientific institution, may transfer their school or institution to a local authority under the Act of 1889.

By the Local Taxation (Customs and Excise) Act, 1890 (53 & 54 Vict. c. 60), County Councils were empowered to appropriate for technical or manual instruction under the Act of 1889 certain moneys accruing from customs and excise duties.

By an Act of 1892 (55 & 56 Vict. c. 29), facilities were given for the acquisition and holding of land by institutions established for the purposes of the Act of 1889.

SECTION VIII.—DIVISION OF PARISHES.

Parish Boundaries.

In most instances the boundaries of parishes depend on ancient and immemorial custom, evidenced by tradition.

A custom prevails in many parts of England, in parishes where the boundaries are not sufficiently defined, to make perambulations for marking the boundaries—termed "beating the bounds"—once a year, generally in Rogation week.

And although such proceedings have been declared contrary to law and reason, and there are modes provided by statute (namely, by Inclosure (*a*) and other Acts) for determining the boundaries of parishes and the parochial locality of lands, still the right to perambulate parochial boundaries, to enter private property for that purpose, and to remove obstructions which might prevent this from being done, has been upheld by high judicial authority (*b*).

Formation of New Parishes for Ecclesiastical Purposes.

By various Acts, known as the Church Building Acts (58 Geo. III. c. 45; 59 Geo. III. c. 134), and New Parishes Acts (6 & 7 Vict. c. 37; 19 & 20 Vict. c. 104), provision has been made for carving out of an old parish new ecclesiastical districts, with their district or parish churches, without interfering with the arrangements of the old parish for civil purposes.

If the Ecclesiastical Commissioners think it expedient to divide any parish into two or more separate parishes for ecclesiastical purposes, they may, with the consent of the Bishop of the diocese and the concurrence of the patron of the living, make application for the purpose to the Queen in Council.

Or the initiative may be taken by private parties, who may open negotiations with the Commissioners, with the view of bringing about the subdivision of a parish. Under certain conditions the patronage of a new church may be vested in the person contributing the funds for its erection or endowment.

Arrangement of Parishes for Civil Purposes.

For the provisions of the Local Government Act, 1894 (57 & 58 Vict. c. 73), on this subject, see *ante*, pp. 596, 597.

(*a*) The Inclosure Commissioners, by whom, or under whose supervision, InclosureActs are administered, are now represented by the Board of Agriculture.

(*b*) *Godday* v. *Mitchell*, Owen, 72.

SECTION IX.—VESTRY MEETINGS.

Duties of Vestries.

A Vestry meeting—called for brevity's sake a "Vestry"—has been defined as a public meeting of all the rated inhabitants of a parish convened to talk over or settle certain matters of business connected either with the welfare of the parish or with its duties towards the Church or the State.

Such meetings having originally always been held in the room belonging to the Church in which the minister's "vestments" were kept, and so known as the "vestry," the name came to be applied to gatherings held in the room in question. There was, however, no legal obligation for such a meeting to be held either in the vestry or in any public vestry-room, the meeting being valid if duly summoned and held in any place, even a private house, provided always that the parishioners have perfectly free access to the place.

In certain parishes the business of the parish has devolved on what was called a "Select Vestry," founded either upon custom, or upon Hobhouse's Act (1 & 2 Will. IV. c. 60), or special Acts applicable only to particular places. The Select Vestry in all matters within its scope and authority superseded the common law Vestry open to every inhabitant householder; and where it existed by custom its functions were in all cases strictly limited to those which it had exercised "time out of mind."

The establishment of Local Boards in many large parishes, coupled with the alterations in the law of Church Rates made in 1868, had materially lessened the importance of all kinds of parish vestries previously to the passing of the Local Government Act, 1894, by which Parish Councils, Parish Meetings, and District Councils (see *post*, under those headings), have now been established; and with the duties and powers entrusted to those organisations, there has been left to the Vestries the performance only of their duties concerning the Church, or the administration of parochial endowments coming under the head of Ecclesiastical Charities (see *post*, p. 633). These remarks, however, do not apply to the metropolitan vestries.

Vestries of Metropolitan Parishes.

The constitution and proceedings of the metropolitan Vestries—that is, the Vestries of the great parishes of the metropolis outside the area of the City of London—are regulated

by the Metropolis Local Management Acts (18 & 19 Vict. c. 120; 19 & 20 Vict. c. 112; 21 & 22 Vict. c. 104; 25 & 26 Vict. c. 102), and various amending Acts.

For the purpose of the Acts, certain of the parishes are united, and each Vestry—whether of a single parish or of united parishes—consists of a certain number of ratepayers, according to population, elected by rated householders—namely, 18 vestrymen for every parish in which the number of rated householders shall not exceed 1,000; 6 additional vestrymen, or 24 in all, for every parish in which the rated householders shall exceed 1,000; 12 additional vestrymen, or 36 in all, where the rated householders shall exceed 2,000; and so on, or the proportion of 12 additional vestrymen for every 1,000 rated householders: but the number of vestrymen is in no case to exceed 120. The incumbent and churchwardens of each parish are to constitute a part of the vestry, in addition to the elected vestrymen.

The vestrymen are elected annually in November for a term of three years, a certain proportion having thus to retire annually, and to offer themselves for re-election, if they desire to continue to serve.

Certain of the metropolitan parishes are united under the management of District Boards of Works, instead of Vestries, but the difference is one of nomenclature only, substantially the same qualifications and the same powers prevailing in the two cases, and the representatives of the parishes on the District Boards being elected by their several Vestries.

But a material alteration in the law affecting metropolitan Vestries has been made by the Local Government Act, 1894, the provisions of which Act with respect to the qualification of the electors of urban district councillors and of the persons to be elected, and with respect to the mode of conducting the election (see *ante*, p. 604), are to apply as if members of the Vestries and District Boards were urban district councillors (56 & 57 Vict. c. 73, § 31).

It is also provided no person shall *ex officio* be chairman of any of the said Vestries, and that the Elections (Hours of Poll) Act, 1885 (see *ante*, p. 582), shall apply to elections to the said Vestries (§ 31).

Each of the Vestries and District Boards shall at their first meeting after the annual election of members elect a chairman for the year, and the provisions of the Act with respect to chairmen of urban District Councils being justices are to apply as if the said Vestries and Boards were urban District Councils (§ 31).

Notice of Vestry Meetings.

The notice convening a Vestry meeting (in parishes other than those dealt with in the Metropolis Local Management Acts) must be signed by the Incumbent, or by a Churchwarden or an Overseer, and must specify the *place*, *day*, *hour*, and *purpose* of the meetings; and it must be affixed to or near to the principal door of the parish Church, and of every *consecrated* Church or Chapel within the parish. (1 Vict. c. 45, § 2.)

It is not necessary to place a notice on proprietary or private Chapels, or Dissenting Chapels or meeting-houses.

The notice must be published (which in this connection means exhibited to the public) before the commencement of divine service on Sunday, three clear days at least before the meeting, exclusive of the day of giving the notice and of the day of meeting. Therefore if it is desired to have the meeting on a Monday, Tuesday, or Wednesday, the notice must be given on the Sunday week preceding (*a*).

Course of Business at a Vestry Meeting.

The incumbent of the parish, whether rector, vicar, or perpetual curate, is *ex officio* chairman (*b*). Should he not arrive by the hour fixed for the meeting, the parishioners present are forthwith (*c*) to appoint a chairman, who remains so though the incumbent may subsequently arrive, unless he were expressly chosen only to act until the incumbent should arrive. If there should be a difference of opinion as to the choice of a chairman, the meeting must decide by show of hands. A curate can only act and vote as an ordinary parishioner.

No business but that specified in the notice can be transacted, and no motion or amendment inconsistent with the object of the meeting, as stated in the notice, should be permitted. It is not allowable to move an evasive adjournment.

On a motion being made (say) that A. B. be appointed churchwarden and an amendment that C. D. be appointed, the chairman will first put the amendment. If it is carried he will put it a second time as the main question, in order to give the meeting the chance of nominating another candidate, E. F., or perhaps several other candidates in succession (not all at once).

(*a*) *Reg.* v. *Salop*, J. J., 3 N. & P., 286; *Newton* v. *Salisbury*, 4 C. B., 42.
(*b*) *Wilson* v. *MacMath*, 3 B. & A., 241; *Reg.* v. *D'Oyly*, 12 A. & E., 139.
(*c*) 58 Geo. III. c. 69, § 2.

The chairman should see the minutes and all motions, amendments, and corrections duly entered, and not till then sign the minutes. He should take care that the sense of the meeting be taken upon any proper motion relative to the specified business; that such business be brought forward in proper form; and that, so far as he can provide for it, all may have an opportunity of speaking who desire to do so, although he cannot compel the meeting to hear them.

The chairman must decide which of several persons claiming to be heard has a right to speak first; may himself speak to any question; and generally must keep order. It is better for the chairman not to move any resolution himself.

As a general rule, the chairman cannot interrupt, adjourn, or postpone the business; this can only be done by the meeting manifesting its pleasure on a show of hands (*a*).

But where an adjournment is necessary (as where a poll is demanded) the chairman may adjourn of his own authority, and may appoint the time and place for a poll; and this, notwithstanding that the churchwardens and overseers have given notice that if a poll is demanded, it will be held at a different time and place. It has, however, been held that a poll may be taken then and there (*b*), but the occasion when this is reasonable will seldom occur (*c*).

Poll at a Vestry Meeting.

If a poll be asked it must be granted, or the election will be invalid (*d*). The chairman, before he adjourns the meeting, will announce the place and time of its commencement and close. (It is advisable at once to name the time and place, and to further agree that if no vote on either side be tendered for an hour the poll shall then close.)

The place and duration of the poll must be such as to allow all voters to come in, and it should be made reasonably notorious. The rate-books should be produced, and their production can be enforced. There can be no voting by ballot.

Where a voter is dissatisfied with the decision of the chairman on the show of hands, he should demand a poll: if he omit to do so, he will be deemed to have acquiesced in the decision, and cannot afterwards impugn it (*e*). Any voter has

(*a*) Rogers, Eccl. Law (2nd ed.), 955.
(*b*) In re *Chillington Iron Co.*, 54 L. J. Ch., 624.
(*c*) In re *Egham Burial Board*, 29 L. T. (o. s.), 343.
(*d*) *Reg.* v. *Etty*, 42 J. P., 36.
(*e*) *Cornwall* v. *Woods*, 4 N. E. C., 555.

a right to demand a poll, and the chairman is bound to grant it, although a majority of the vestrymen object (*a*).

All qualified persons are entitled to vote at the poll, whether present at the show of hands or not (*b*). The poll must be kept open a sufficient time to enable all (if they will) to exercise their privilege ; regard being had to the numbers and to the distance at which they reside (*c*). The chairman has no right to close the poll prematurely, even on account of disturbances : when such arise he should adjourn the Vestry. If he close the poll prematurely, a *Mandamus* may be granted by the Queen's Bench to compel him to call a Vestry to hold a fresh election (*d*).

Although the chairman has power to adjourn in case of decided interruptions or disturbances by members present, still he has no authority himself to interrupt the business or adjourn without sufficient cause : his duty in the chair is, to regulate the proceedings, and as far as he can to forward the business : but any attempt on his own part to stop the business or postpone the meeting is illegal (*e*).

The result of the poll must be announced in open Vestry. It is generally better, as regards disputed votes, to adjourn the poll for a scrutiny than to discuss the votes when tendered ; but the chairman may decide as to the validity of the votes tendered, and may call in an assessor to assist him in doing so (*f*).

If it is desired to do new business at the adjourned Vestry, fresh notice must have been given, for, as regards new business, it is a new meeting.

A valid decision, such as the election of a particular candidate as a Churchwarden, can only be arrived at by a majority (however small) of those present at the Vestry, the chairman having a casting vote (*g*) ; or, in the event of a poll being demanded, by a majority of the parishioners.

Each person has one vote only on a show of hands.

The persons qualified to vote are the occupiers, whether resident or not (including unmarried women and widows) rated to the relief of the poor, and who have duly paid, directly by themselves or indirectly by their landlords, all rates made

(*a*) Same ; and see *R.* v. *Robinson*, 27 L. T., 110, and 31 L. T., 358.
(*b*) *Faulkner* v. *Elger*, 4 B. & C., 449.
(*c*) *R.* v. *Commissary of the Bishop of Winchester*, 7 East, 573.
(*d*) *R.* v. *Graham*, 9 W. R., 738.
(*e*) Rogers, Eccl. Law (2nd ed.), 955.
(*f*) A scrutiny cannot be demanded as a matter of right. See *Reg.* v. *Vicar of Hammersmith*, 19 L. T., 203 ; and Prideaux, 113, n. (*v.*).
(*g*) In addition to his own vote or votes. 58 Geo. III. c. 69, § 2.

and signed by the overseers more than 3 months previously to the meeting (*a*).

Upon a poll the votes are to be set down according to the following scale :—

A ratepayer assessed (for one or more properties) under £50 has 1 vote ; at or above £50 and under £75, 2 votes ; £75 to £100, 3 votes ; £100 to £125, 4 votes ; £125 to £150, 5 votes ; at or above £150, 6 votes.

At a poll 6 votes is the maximum in all cases, except where an owner, having paid the rate of an occupier, is entitled to the votes of the occupier in addition to his own, under § 8 of the Compulsory Church Rate Abolition Act, 1868, if such an occasion arise.

The voters must attend in person, no proxies being allowed except under a Local Act.

Corporations and companies vote by their secretaries, clerks, &c., by a special order under their corporate seal.

Where two or more inhabitants are jointly rated, each votes according to the proportion borne by him of the joint charge ; but where only one of the persons jointly rated attends, he votes according to the whole of the joint charge, but so as not to exceed the maximum already specified.

Vestry Clerk.

There are two kinds of Vestry clerks known to the law. The parishioners in Vestry, at pleasure, for such time and purpose as they wish, may appoint a person to act as Vestry clerk, to perform under the direction of the chairman or of a meeting such duties as may be required of him. Such a clerk is a mere creature of the Vestry, and as a rule no salary appertains to his office.

By the Vestry Clerks Act, 1850 (13 & 14 Vict. c. 57), the Local Government Board have power to declare that in any parish with a larger population than 2,000 a vestry-room may be built and a Vestry clerk appointed, provision also being made for the appointment, removal, and salary of that official. These matters are under the control of the Local Government Board ; but his duties are described at great length in the statute itself. (13 & 14 Vict. c. 57, § 6.)

It is expressly provided by the Local Government Act, 1894, that a Parish Council shall not appoint to the office of vestry clerk (56 & 57 Vict. c. 73, § 17).

(*a*) 16 & 17 Vict. c. 65 ; 58 Geo. III. c. 69, §§ 2, 3, 4 ; 59 Geo. III. c. 85, § 1.

SECTION X.—PARISH MEETINGS AND PARISH COUNCILS.

Constitution of Parish Meetings and Parish Councils.

These bodies owe their constitution to the Local Government Act, 1894 (56 & 57 Vict. c. 73); and the subjoined provisions give the substance of the Act in this respect.

If a rural parish—namely, a parish in a Rural Sanitary District—is partly in a borough or other Urban Sanitary District, the urban and rural parts are to form separate parishes; and it rests with the Councils to take the steps prescribed by the Act for defining the areas and boundaries of parishes for the purpose of the Act.

(1) Where a rural parish has a population under 300 but of 100 or more, it may in Parish Meeting resolve to have a Parish Council, and the County Council are then by order to establish it. (2) Where a parish has less than 100 population, the County Council may, with the consent of the Parish Meeting, by order establish a Parish Council.

The County Council may also, with the consent of each parish, group small parishes under a common Parish Council, leaving each its Parish Meeting.

Where parishes in classes (1) and (2) do not have a Parish Council, and are not grouped, each will be governed by its Parish Meeting, which in these cases possesses larger powers than are conferred on the Parish Meeting in cases where the Parish has a Parish Council. Thus it will have the appointment of Overseers and Assistant Overseers, and of Trustees of Charities, in place of the Churchwardens or Overseers; it will exercise all the secular functions of the Vestry and certain other powers given to the Parish Council, and may act, if it so wishes, through a Committee.

Provision is also made by the Act whereby the County Council may on application from such a Parish Meeting invest it with any further powers of Parish Councils not expressly given to it by the Act. It may levy a rate for its expenses, not exceeding in the whole 6*d.* in the £ in any year.

Parochial Electors.

The persons entitled to attend and vote at the Parish Meeting (called in the Act parochial electors) are the persons on the County Council or Parliamentary registers; and it is provided that a woman shall not be disqualified by marriage for being on the County Register, or voting under the Act. (The

provisions of the Act as to the register of parochial electors will be found at p. 588.)

Parish Meeting.

The Parish Meeting is to take the place of the Vestry in all secular matters, the Vestry as at present constituted, with the Incumbent as Chairman, being concerned in future with ecclesiastical matters only.

Parish Meetings are not to begin before 6 P.M., and one such meeting must be held in every year. The time and place of holding a Parish Meeting will be fixed by the Parish Council, or, where there is none, by the chairman of the Parish Meeting.

Public notice of a Parish Meeting is to be given in the manner required for giving notice of Vestry meetings, and by posting the notice in some conspicuous place or places within the parish, and in such other manner (if any) as appears desirable for giving publicity to the notice.

The Meeting are to elect their own chairman, except where the chairman of the Parish Council is not a candidate for election, when he will be chairman. Each elector may give one vote and no more on any question submitted to the meeting ; or in the case of an election, one vote for each candidate.

Where a Parish Meeting is held for the election of Parish Councillors, opportunity is to be given at the meeting for putting questions to such of the candidates as are present at the meeting and for receiving explanations from them.

Large parishes may, for the purposes of election, be divided by the County Council into wards.

Any poll to determine a question arising at a Parish Meeting is to be taken by ballot. The expenses of the ballot are to be paid out of the poor rate, according to a scale made by the County Council, or in their default by the Local Government Board. Rules are to be made by the Local Government Board as to the poll. These rules will prescribe on what day the poll is to be taken, and will provide for the method of application of the Corrupt Practices Act.

Rules applicable to Parish Meetings.

The following are the rules prescribed by the Act (§ 2) with respect to Parish Meetings :—

(1.) The annual assembly of the parish meeting shall be held on the wenty-fifth day of March in each year, or within seven days before or after that day. [By 60 Vict. c. 1, § 2, it is now provided that the annual assembly shall be held on some day between the first day of March and the first day of April, both inclusive, in each year.]

(2.) Not less than seven clear days before any parish meeting, public notice thereof shall be given specifying the time and place of the intended meeting and the business to be transacted at the meeting, and signed by the chairman of the parish council or other conveners of the meeting.

(3.) If the business relates to the establishment or dissolution of a parish council, or the grouping of a parish, or the adoption of any of the adoptive Acts, not less than fourteen days' notice shall be given.

(4.) A parish meeting may discuss parish affairs and pass resolutions thereon.

(5.) Every question to be decided by a parish meeting shall, in the first instance, be decided by the majority of those present and voting on the question, and the chairman shall announce his decision as to the result, and that decision shall be final, unless a poll is demanded.

(6.) A poll may be demanded at any time before the conclusion of a parish meeting.

(7.) A poll may be demanded by any one parochial elector in the case of a resolution respecting any of the following matters, namely :—

(*a.*) Any application, representation, or complaint to a county council or district council ;

(*b.*) The appointment of a chairman for the year or of a committee, or the delegation of any powers or duties to a committee, or the approval of the acts of a committee ;

(*c.*) The appointment of an overseer, the appointment or revocation of the appointment or dismissal of an assistant overseer or a parish officer ;

(*d.*) The appointment of trustees or beneficiaries of a charity ;

(*e.*) The adoption of any of the adoptive Acts ;

(*f.*) The formation or dissolution of a school board ;

(*g.*) The consent or refusal of consent to any act, matter, or thing which cannot by law be done without that consent ;

(*h.*) The incurring of any expense or liability ;

(*i.*) The place and time for the assembly of the parish meeting ;

(*k.*) Any other prescribed matter ;

but, save as aforesaid, a poll shall not be taken unless either the chairman of the meeting assents, or the poll is demanded by parochial electors present at the meeting, not being less than five in number or one-third of those present, whichever number is least.

(8.) In case of an equal division of votes at a parish meeting the chairman shall have a second or casting vote.

(9.) Where a parish meeting is held for the election of parish councillors, opportunity shall be given at the meeting for putting questions to such of the candidates as are present, and receiving explanations from them, and any candidate shall be entitled to attend the meeting and speak thereat, but, unless he is a parochial elector, not to vote.

(10.) If the chairman of the parish meeting is absent from or unwilling or unable to take the chair at any assembly of the parish meeting, the meeting may appoint a person to take the chair, and that person shall have, for the purpose of that meeting, the powers and authority of the chairman.

(11.) Any notice required to be given to or served on a parish meeting may be given to or served on the chairman of the parish meeting.

Parish Council.

The Parish Council is to consist of a Chairman and such number of Councillors as may be fixed by the County Council, being not more than fifteen nor less than five.

Parish Councillors are to be chosen from among the parochial electors, or from persons who have been for 12 months resident in the parish or within 3 miles of it.

They are to be elected annually, are to be nominated in writing by two parochial electors at a Parish Meeting, and if more candidates are nominated than there are vacancies, a poll is to be taken by ballot.

The Parish Council comes into office on April 15th in each year, and is to hold an annual meeting within seven days after to elect a chairman for the year.

Use of Rooms.

In any parish in which there is no suitable public room vested in the Parish Council which can be utilised without payment (or where there is no Parish Council, no such room vested in the chairman of a Parish Meeting and the overseers), the Parish Council or the Parish Meeting are entitled to use, free of charge, rooms in public elementary schools receiving a Parliamentary Grant, or rooms in buildings maintained out of rates.

Such rooms may also be used for official inquiries and for meetings on the subject of allotments, or in connection with the candidature of Parish or District Councillors, or for the administration of public funds.

No interference, however, with the hours during which such rooms are required for their own special purposes is authorised, and the persons having control over them are to be re-imbursed any expense occasioned by their use for the purposes of the Parish Council or Parish Meeting.

No meeting of a Parish Council is to be held on licensed premises except where no other room is available at a reasonable cost.

Powers of Parish Councils and Parish Meetings.

The powers given to the Parish Council are :—

(i) Appointment of Overseers of the Poor, and appointment of additional persons to be Overseers in place of the Churchwardens ;

(ii) Holding of property for the benefit of the parish, and subject to certain conditions, the sale of such property ;

(iii) The powers and duties of the Vestry, except as regards the affairs of the Church, and except the powers of adopting the adoptive Acts (see *post*), and

of consenting to an expense under those Acts (which powers are vested in the Parish Meeting), and except as to highways (which are to be maintained by the District Council, unless the County Council otherwise order);

(iv) The powers and duties of the Churchwardens, except so far as they relate to the affairs of the Church and its charities;

(v) The powers and duties of Overseers, or of Churchwardens and Overseers, as respects rating appeals, the provision of parish books and of vestry-room or parochial office, parish chest, fire engine, or fire escape;

(vi) The power of making representations with respect to unhealthy dwellings or obstructive buildings, under the Working Classes Act, 1890, and with regard to allotments, and the election of allotment managers;

(vii) The powers of allotment wardens, allotment committee, or allotment managers;

(viii) The powers of executing the following adoptive Acts when adopted by the Parish Meeting—namely, the Lighting and Watching Act, 1833; the Baths and Washhouses Acts, 1846 to 1882; the Burial Acts, 1852 to 1885; the Public Improvements Act, 1860; and the Public Libraries Act, 1892—and if the said Acts or any of them are already adopted for an area co-extensive with the parish, then the power of carrying them out in future;

(ix) Powers to provide and acquire buildings for public offices, meetings, and any purpose connected with parish business;

(x) Powers to appoint Trustees of parochial (as distinguished from ecclesiastical) charities;

(xi) Power to provide a recreation ground or public walks, and to make bye-laws with respect to them, or with respect to any village green, or other open space under their control, or to the expense of which they have contributed;

(xii) Power to utilise any well, spring, or stream of water within their parish;

(xiii) Power to deal with any pond, ditch, or drain prejudicial to health;

(xiv) Power to acquire by agreement rights of way beneficial to the parish, whether situate within the parish, or in an adjoining parish.

Rules applicable to Parish Councils.

The following are the rules prescribed by the Act (§ 3) with respect to parish councils :—

(1.) Every parish councillor shall, at the first meeting after his election, or if the council at the first meeting so permit, then at a later meeting fixed by the council, sign, in the presence of some member of the council, a declaration that he accepts the office, and if he does not sign such a declaration his office shall be void.

(2.) If any casual vacancy arises in the council, the council shall forthwith be convened for filling the vacancy.

(3.) The first business at the annual meeting shall be to elect a chairman and to appoint the overseers.

(4.) The chairman may at any time convene a meeting of the parish council. If the chairman refuses to convene a meeting of the council after a requisition for that purpose signed by two members of the council has been presented to him, any two members of the council may forthwith, on that refusal, convene a meeting. If the chairman (without so refusing) does not within seven days after such presentation, convene a meeting, any two members of the council may, on the expiration of those seven days, convene a meeting.

(5.) Three clear days at least before any meeting of a parish council notice thereof, specifying the time and place of the intended meeting and the business to be transacted at the meeting, and signed by or on behalf of the chairman of the parish council or persons convening the meeting, shall be given to every member of the parish council, and in case of the annual meeting notice specifying the like particulars shall be given to every member of the parish council immediately after his election.

(6.) Any notice required by law to be given to the chairman or any other member of the parish council may be left at or sent by post to the usual place of abode of such chairman or member.

(7.) No business shall be transacted at any meeting of a parish council unless at least one-third of the full number of members are present thereat, subject to this qualification, that in no case shall the quorum be less than three.

(8.) The names of the members present at any meeting of the parish council, as well as of those voting on each question on which a division is taken, shall be recorded, so as to show whether each vote given was for or against the question.

(9.) Every question at a meeting of a parish council shall be decided by a majority of votes of the members present and voting on that question.

(10.) In case of an equal division of votes the chairman of the meeting shall have a second or casting vote.

(11.) The parish council may, if they think fit, appoint one of their number to be vice-chairman, and the vice-chairman shall, in the absence or during the inability of the chairman, have the powers and authority of the chairman.

(12.) The proceedings of a parish council shall not be invalidated by any vacancy among their members, or by any defect in the election or qualification of any members thereof.

(13.) A parish council shall hold not less than four meetings in each year, of which one shall be the annual meeting, and every such meeting shall be open to the public unless the council otherwise direct.

(14.) Every cheque or other order for payment of money by a parish council shall be signed by two members of the council.

(15.) Any notice required to be given to or served on a parish council may be given to or served on the clerk to the parish council.

(16.) The parish council may appear before any court or in any legal proceeding by their clerk or by any officer or member authorised generally or in respect of any special proceeding by resolution of the council, and their clerk or any member or officer shall, if so authorised, be at liberty to institute and carry on any proceeding which the parish council are authorised to institute and carry on.

Rules for Parish Councils and Parish Meetings.

The following general rules are prescribed by the Act (§§ 2 and 3) as applicable to both parish councils and parish meetings:—

(1.) Minutes of the proceedings of every parish council and parish meeting shall be kept in a book provided for that purpose.

(2.) A minute of proceedings at a meeting of a parish council, or of a committee of a parish or district council, or at a parish meeting, signed at the same or the next ensuing meeting by a person describing himself as or appearing to be chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(3.) Until the contrary is proved, every meeting in respect of the proceedings whereof a minute has been so made shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

(4.) Any instrument purporting to be executed under the hands or under the hands and seals of the chairman and of two other members of a parish council or of a parish meeting shall, until the contrary is proved, be deemed to have been duly so executed.

(5.) Subject to the provisions of this Act, a parish council may make, vary, and revoke standing orders for the regulation of their proceedings and business, and of the proceedings and business at parish meetings for a rural parish having a parish council.

(6.) Where there is no council for a rural parish, the parish meeting may, subject to the provisions of this Act, regulate their own proceedings and business.

Purchase of Land.

If a Parish Council is unable to acquire by agreement suitable land for any purpose for which they are authorised to acquire it, they may represent the case to the County Council, and if the County Council are satisfied that the land cannot be acquired by agreement they may make an Order for the compulsory purchase of the land.

Any such Order will be submitted to the Local Government Board, and unless appealed against will be confirmed by that Board; but if an appeal is presented, the Local Government Board will inquire into the case and either confirm or disallow the Order.

If the County Council refuse to make the Order on the

application of the Parish Council, the latter may appeal against such refusal to the Local Government Board.

On any such purchase no additional compensation is to be paid by reason of compulsory purchase.

Allotments.

The machinery with respect to compulsory purchase of land is applied also to the acquisition of land for allotments, superseding the process under the Allotment Acts of 1887 and 1890 (50 & 51 Vict. c. 48; 53 & 54 Vict. c. 65).

Power is also given to a Parish Council to hire land for allotments for terms ranging from fourteen to thirty-five years, and if they are unable to hire by agreement, they may apply to the County Council, who are empowered to make an Order, as in the case of compulsory purchase, authorising the hiring.

Rights of appeal against the decision of the County Council are given to parties interested, and the Order becomes final on being confirmed by the Local Government Board. No addition to the rent is to be made in respect of compulsory hiring.

When a Parish Council hire or buy land for allotments, they may let it in plots exceeding one acre, provided that, if hired compulsorily, the amount let to any one allotment holder shall not exceed four acres of pasture or one acre of arable and three acres of pasture, with permission for the erection on the allotment of a stable, cowhouse or barn.

Expenditure by Parish Council.

The expenses of a Parish Council will be payable out of the poor rate; but no Parish Council may, without the consent of the Parish Meeting, alienate parish property, or borrow or incur any expense which involves an annual rate exceeding threepence in the pound; and the total amount which may be raised in any financial year (exclusive of expenses under the adoptive Acts, but inclusive of all charges in respect of loans) is limited to sixpence in the pound.

A Parish Council may, with the consents of the Parish Meeting and of the County Council and the Local Government Board, borrow money for the purchase of land, and for buildings and other permanent works. The money may be borrowed from the County Council.

The Accounts of Parish Councils and Parish Meetings are to be audited yearly by the District Auditors of the Local Government Board.

Rights of Way and Footpaths.

In future, a public right of way in a parish may not be

stopped or diverted without the consent of the Parish Council and of the District Council; and a highway in a parish is not to be declared unnecessary and not repairable at the public expense without the consent of the Parish Council. Such consent is not to operate except with the consent of a Parish Meeting, to whom two months' notice is to be given.

A Parish Council may also undertake the repair and maintenance of any footpath in their parish not by the roadside.

Parish Property and Charities.

Trustees holding any property for the purpose of a recreation ground or allotments, or otherwise for the benefit of a rural parish, may, with the approval of the Charity Commissioners, transfer it to the Parish Council.

Where the Overseers are trustees of any property for the benefit of the parish, a corresponding number of persons are to be appointed by the Parish Council to be trustees in place of the Overseers; and if the charity is not an ecclesiastical charity the same enactment is made as respects Churchwardens.

In the case of non-ecclesiastical parochial charities administered by a body of trustees containing no representative element, the Parish Council may appoint additional trustees to the extent allowed by the Charity Commissioners.

This provision, as well as that of the preceding paragraph, applies to charities which have been founded more than forty years; and in the case of charities the founders of which are still alive the application of these provisions will commence at the expiration of forty years from the passing of the Act.

Any powers the Vestry now have to appoint trustees or beneficiaries of a charity, not being an ecclesiastical charity, are transferred to the Parish Council.

Draft schemes of public bodies affecting parish charities are to be communicated to the Parish Council, who will have the same rights as now possessed by the inhabitants.

Relation to District Council.

A Parish Council may be invested with the powers of a Parochial Committee under the Public Health Act, 1875.

If a Parish Council consider that the District Council has not properly provided for the sewerage or water supply, or for the maintenance of the highways of the parish, they may complain to the County Council, and the County Council may require the District Council to perform their duty, and if they fail, may undertake the duty themselves. Before entering

into a contract for works of sewerage or water supply for any rural parish, the District Council are to give notice thereof to the Parish Council.

Rules for Proceedings of Parish or District Councils.

The following rules for proceedings of committees of Parish or District Councils are prescribed by the Act:—

(1.) The quorum, proceedings, and place of meeting of a committee, whether within or without the parish or district, and the area (if any) within which the committee are to exercise their authority, shall be such as may be determined by regulations of the Council or Councils appointing the committee.

(2.) Subject to such regulations, the quorum, proceedings, and place of meeting, whether within or without the parish or district, shall be such as the committee direct, and the chairman at any meeting of the committee shall have a second or casting vote.

Officers of Parish Council.

A Parish Council may appoint one of their number to act as clerk without pay; but if no member of the Council is appointed, the assistant overseer, if any, is to be clerk, and the work so done by him is to be taken into account in fixing his salary. If there is no assistant overseer, the Council may appoint the collector of poor rates or other fit person to be clerk, with a remuneration approved by the District Council.

Where, however, there is at present a Vestry clerk he is to be the clerk to the Parish Council.

A Parish Council may appoint a treasurer without pay.

Parish Documents.

All documents required to be deposited with the Parish clerk are to be deposited with the clerk, or if none, with the chairman of the Parish Council; but the custody of registers of baptisms, marriages, and burials, and of other documents relating to ecclesiastical matters, remains as at present.

The Parish Council may direct in what custody other parochial books and documents are to be kept, and the County Council are to make periodical inquiry as to the manner in which public records under the control of the parochial authorities are being preserved, and may make such orders in that behalf as they think fit.

Postal Facilities in a Parish.

By an Act of 1895, the Parish Council, or where there is none the Parish Meeting, are empowered to guarantee the Postmaster-General against loss sustained by the provision of postal or other facilities in the parish. (58 & 59 Vict. c. 18.)

SECTION XI.—OVERSEERS OF THE POOR AND RATES.

The title "Overseers of the Poor" scarcely conveys a correct impression of the present duties of those officials, for although originally appointed to execute the Statute 43 Eliz. c. 2, for the relief of the poor, they now perform a great variety of functions, amongst which Poor Law business occupies a very subordinate place.

By the Local Government Act, 1894 (57 & 58 Vict. c. 73) the appointment of Overseers, in most parishes, now forms one of the powers of the Parish Council, who are to make the appointment every year at their annual meeting in April (§ 5, sub-§ 1). In a parish not having a Parish Council, the Parish Meeting are to appoint the Overseers at their annual assembly in March or April (§ 19, sub-§ 5). And the Parish Council, or where there is not a separate Parish Council the Parish Meeting, have the power of appointing and dismissing an Assistant Overseer (§ 5, sub-§ 1). An Assistant Overseer already holding office in a parish for which a Parish Council is elected is to become an officer to the Council (§ 81, sub-§ 3).

And under the same Act, also, the Parish Council are to exercise the powers which formerly appertained to the Overseers and Churchwardens with respect to valuation lists and rating appeals (§ 6, sub-§§ 1, 2).

Overseers act as the local agents in their parishes of the Clerk of the Peace for a variety of purposes connected with the annual revision of the lists of Parliamentary voters.

They are responsible for the various lists and notices connected with this work being duly posted up at the proper places and at the proper times. Neglect as to these duties may lead the Revising Barrister to refuse them their expenses out of pocket, and in extreme cases of wilful default the Barrister may impose a fine not exceeding £5, nor less than 20*s*. (6 Vict. c. 18, § 51; 31 & 32 Vict. c. 58, § 27.)

Persons exempt from serving the office of Overseer are Peers, Members of Parliament, Magistrates, Aldermen of London, Clergymen, Dissenting Ministers, practising Barristers and Solicitors, members of the College of Physicians, members of the College of Surgeons, Apothecaries, Officers of the Courts of Law, of the Army and Navy (though on half pay), of the Customs and Excise, and persons concerned in contracts to supply goods to workhouses or for the use of the poor (*a*).

(*a*) **Steer, Parish Law (3rd ed.), 531** *et seq.*

Exemption of Churches and Chapels from Rates.

All churches, chapels, and meeting-houses or premises, or such part thereof as shall be "exclusively appropriated" to public religious worship, and (in the case of Nonconformist chapels) shall be duly certified to the Registrar General, are exempt from poor rates; and it is provided that the use of any part of the exempted premises as Sunday or infant schools, or for the charitable education of the poor, shall not render the premises liable to be rated. (3 & 4 Will. IV. c. 30.)

Where premises so exempted are used (as in some cases is not unfrequently done) for public entertainments, and a charge is made for admission, there is risk of the premises becoming liable to be rated.

Under the Highway Act, 1835 (5 & 6 Will. IV. c. 50), premises already exempt (as in the cases above) from poor rate are exempt also from highway rate; and under the Public Health Act, 1875 (38 & 39 Vict. c. 55, § 150), they are exempt from expenses incurred by urban authorities in sewering, paving, or lighting the streets in which the premises are situate.

Exemption of Sunday and Ragged Schools.

Buildings used for these purposes are not directly exempted, as in the case of churches and chapels, but by 32 & 33 Vict. c. 40 every authority having power to impose or levy any rate upon the occupier of a building, or part of a building, used exclusively as a Sunday school or a ragged school may exempt such building or part of a building from payment of the rate, this provision being in addition to the exemption given by 3 & 4 Will. IV. c. 30 (see above). The rating authority is not bound to exempt, but may exercise a discretion (*a*).

Exemption of Voluntary Public Elementary Schools.

By the Voluntary Schools Act, 1897 (60 Vict. c. 5), no person is to be assessed or rated to or for any local rate in respect of land or buildings used exclusively or mainly for the purposes of the schoolrooms, offices, or playground of a voluntary school, except to the extent of any profit derived by the managers of the school from the letting thereof. By "voluntary school" is meant a "public elementary day school not provided by a school board."

Inspection of Rate-books by Ratepayers.

Every ratepayer has a right to inspect the rate-books at any reasonable time of the day, and to make extracts therefrom:

(*a*) *Bell* v. *Crane*, L. R. 8 Q. B. 481; 42 L. J. M. C., 122.

and if any overseer or other person, having the custody of the poor-rate books, does not permit such inspection, he is liable to a penalty of £5. (6 & 7 Will. IV. c. 96, § 5.)

Distress for Poor Rate.

The procedure for the recovery of a poor rate is by summoning the defaulter before two local Justices, who may issue a warrant to distrain for the rate and costs.

Where a warrant of distress is issued for the recovery of a poor rate, the person against whom it is issued is liable in costs, although the amount of the rate be tendered before the levy is made. (39 & 40 Vict. c. 61, § 31.)

Agricultural Rates Act, 1896.

By this enactment (59 & 60 Vict. c. 16), during the period of five years after March 31st, 1897, the occupier of agricultural land in England will be liable to pay one-half only of the rate in the pound payable in respect of buildings and other hereditaments, except a rate (i) which the occupier of agricultural land is liable to pay in the proportion of one-half or less than one-half, or (ii) which is assessed under any commission of sewers or in respect of any drainage, wall, embankment, or other work for the benefit of the land (§ 1).

"Agricultural land" in the Act means any land used as arable, meadow, or pasture ground only, cottage gardens exceeding one quarter of an acre, market gardens, nursery grounds, orchards, or allotments, but does not include land occupied together with a house as a park or pleasure-grounds, or land kept or preserved mainly or exclusively for purposes of sport or recreation, or used as a racecourse (§ 9).

Appeals against Poor Rates.

If the Overseers (or Parish Council) have reason to think that the *parish* is aggrieved by the valuation list, on the ground of inequality, etc., as regards other parishes, appeal may be made to Quarter Sessions; and any ratepayer may also appeal to Quarter Sessions against any poor rate (upon the grounds of inequality, unfairness, incorrectness, or irregularity in his assessment, or in the making of the rate), on giving 21 days' notice of the appeal to the Assessment Committee. (27 & 28 Vict. c. 39.)

Appeals against rates in the Metropolis are regulated by an Act which only applies to the Metropolis. (32 & 33 Vict. c. 67.)

SECTION XII.—CHARITABLE TRUSTS.

Mortmain Acts.

By the Mortmain Act (9 Geo. II. c. 36), neither lands, nor moneys or stock for the purchase of lands, could be settled for any charitable uses except by deed executed 12 months at least before the death of the donor, and enrolled in Chancery 6 months next after the execution thereof; nor unless such stock were transferred 6 months at least before the death of the donor; nor unless the deed were without any power of revocation, trust, etc., for the benefit of the donor, or any person claiming under him. Gifts to the Universities or to the colleges at Eton, Winchester, and Westminster, were excepted.

The Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), which continued most of the restrictions of the earlier Mortmain Acts in consolidating and amending them, added London, Durham, and the Victoria Universities to the exempted universities, and Keble to the exempted colleges.

Thus, while a person was enabled to bequeath money for charitable purposes by will, the gift was not to involve the acquisition of land—as, for example, the foundation of an hospital (*a*). And a gift of money by will, to a charity, to be expended in building, was void unless it were distinctly expressed that no part of the money was to be expended in the purchase of land; or unless the new building was to be erected on land already in mortmain (*b*).

Mortmain and Charitable Uses Act, 1891.

But under this Act, "land" (including tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land; the definition of "land" in the Act of 1888 being repealed) may now be assured by will for the benefit of any charitable use (*c*): but such land is to be sold within one year from the death of the testator, unless the time be extended by the Court, or a judge at chambers, or by the Charity Commissioners. (54 & 55 Vict. c. 73, §§ 3, 4.)

(*a*) *Hawkins* v. *Allen*, 40 L. J. Ch., 23. (*b*) *Cox* v. *Davie*, 47 L. J. Ch., 72.

(*c*) Where a testator, who died *after* the passing of the Act of 1891, by his will made *before* the passing of the Act, gave to a charity such part of the residue of his estate "as may by law be given for charitable purposes," with a separate gift of the remainder to A, it was held by the Court of Appeal that the Act applied, and in the absence of a contrary intention expressed in the will the whole of the residue, realty as well as personalty, went to the charity (In re *Bridger : Brompton Hospital for Consumption* v. *Lewis*, L. R. (1894) 1 Ch. 97).

Any personal estate which by will is directed to be laid out in the purchase of land "to or for the benefit of any charitable uses" is to be held for such uses as though there had been no such direction (§ 7). But land bequeathed or directed to be acquired, which is required for actual occupation by a Charity, may be retained or acquired (as the case may be) with the sanction of the Court or the Charity Commissioners (§ 8).

The Act applies only to the will of a testator dying after the date of the passing of the Act—namely, 5th August, 1891 (*a*).

Working Classes Dwellings Act, 1890.

By this Act (53 & 54 Vict. c. 16) gifts of land, whether made by deed or will, for the purpose of providing dwellings for the working classes, are exempted from the Mortmain Acts, provided that the quantity of land assured by will shall not exceed five acres; and that the deed or will, within six months, be enrolled in the books of the Charity Commissioners, or the office for registering deeds in Dublin.

Sites for Schools and other Public Institutions.

Other important exceptions to the Mortmain Act have been introduced by various Acts of the present reign, granting facilities for the conveyance of sites for schools, so that the death of the donor or grantor within 12 months from the execution of the deed will not render it void (*b*). Similar facilities have been afforded (for burial places as well as places of worship) by the Sites for Places of Worship Act, 1873 (*c*); and for other institutions by the Literary and Scientific Institutions Act, 1854 (*d*), by the Recreation Grounds Act, 1859 (*e*), and by the Public Parks, Museums, and Schools Act, 1888 (*f*).

Under this last-mentioned Act, if the gift of land is for a public park it must not exceed 20 acres; if for a museum, the limit is two acres; and if for a school, one acre.

By the Companies Act, 1862, no company formed for the promotion of art, science, religion, charity, or any other like object, can, without the sanction of the Board of Trade, hold more than two acres of land. (25 & 26 Vict. c. 89, § 21)

Trustees Appointment Act, 1890.

This Act (53 & 54 Vict. c. 19) provides that the power for the appointment of new Trustees conferred by the Conveyancing

(*a*) See foot-note (*c*) on p. 630. (*b*) Amongst these Acts may be mentioned 4 & 5 Vict. c. 38; 7 & 8 Vict. c. 37; 12 & 13 Vict. c. 49; 14 & 15 Vict. c. 24; 15 & 16 Vict. c. 49. (*c*) 36 & 37 Vict. c. 50, amended by 45 & 46 Vict. c. 21. (*d*) 17 & 18 Vict. c. 112. (*e*) 22 Vict. c. 27. (*f*) 51 & 52 Vict. c. 42.

and Law of Property Act, 1881, or any other statutory power for the same purpose, shall apply to all land held on trust for "religious" or "educational" purposes (§ 3); and that the enactment contained in 13 & 14 Vict. c. 28 (commonly known as Peto's Act), whereby any conveyance or assurance of land under that Act was made effectual to vest the land in the continuing or new Trustees, shall be effectual to vest the land in like manner in every case where Trustees are appointed under this Act or other statutory power.

After the expiration of six months from the date of any instrument purporting to appoint Trustees under the Act, the persons thereby appointed shall, for the purpose of any sale or mortgage, be deemed to be the duly appointed Trustees, unless within such six months proceedings have been taken to set aside the appointment (§ 6).

The Act does not extend to Scotland (§ 8).

Charitable Trusts (Recovery) Act, 1891.

Where it appears to the Charity Commissioners that proceedings should be instituted for the recovery of any property, the gross annual income of which does not exceed £20 a year and which appears to belong to a charity, and there are either no trustees or the trustees are unwilling to move in the matter, the Board itself, with the sanction of the Attorney-General, may institute such proceedings (54 & 55 Vict. c. 17, § 3).

And where any periodical payment has been made in respect of any land for the benefit of a charity for twelve consecutive years, such payment is to be deemed *primâ facie* evidence of the perpetual liability of such land to make the payment (§ 5).

Parochial Charities under Local Government Act, 1894.

Where the Overseers of a rural parish, either alone or jointly with other persons, are trustees of a parochial charity, such Overseers are to be replaced by such number of Parish Councillors or other persons, not exceeding the number of Overseer trustees, as the Council may appoint; and when the Charity is not an ecclesiastical one, this enactment is to apply as if the Churchwardens, as such, were specified therein as well as the Overseers (56 & 57 Vict. c. 73, § 14, sub-§ 2).

Where the governing body of a non-ecclesiastical parochial charity which has been established 40 years does not include persons elected by the ratepayers, parochial electors, or inhabitants, or appointed by the Parish Council or Meeting, the Parish Council may appoint additional members of the governing body, not exceeding the number authorised by the Charity

Commissioners; and if there is only one trustee, the number of the trustees may, with the consent of the Charity Commissioners, be increased to three (§ 14, sub-§ 3).

Where the Vestry of a rural parish is entitled to appoint the trustees or the beneficiaries of a non-ecclesiastical charity, such appointment is now to be made by the Parish Council, and the beneficiaries are to be selected by persons chosen by the Council to make the selection (§ 14, sub-§ 4).

The accounts of all non-ecclesiastical parochial charities are to be laid annually before the Parish Meeting; and in the case of dole charities the names of the recipients are to be published in such form as the Parish Council or Parish Meeting may think fit (§ 14, sub-§ 6).

Ecclesiastical Charities under the Act.

Ecclesiastical charities (as distinguished from non-ecclesiastical, dealt with as above) are defined (§ 75) as charities the endowment whereof is held (i) for any spiritual purpose which is a legal purpose; or (ii) for the benefit of any spiritual person or ecclesiastical officer as such; or (iii) for use, if a building, as a church, chapel, mission room, or Sunday school, or otherwise by any particular church or denomination; or (iv) for the maintenance, repair, or improvement of any such building, or for the maintenance of divine service therein; or (v) otherwise for the benefit of any particular church or denomination, or members thereof as such: provided that where any endowment of a charity, other than a building held for any of the purposes aforesaid, is held in part only for some of these purposes, the charity, so far as that endowment is concerned, is to be deemed an ecclesiastical charity, and the Charity Commissioners, on application by any person interested, are to make provision for the apportionment and management of that endowment.

"Ecclesiastical charity" is also to include any building which in the opinion of the Charity Commissioners has been erected or provided within forty years before the passing of the Act, mainly by or at the cost of members of any particular church or denomination.

Public Inquiries concerning Charities.

The Council of any county or county borough may pay or contribute towards the expenses of inquiries conducted by the Charity Commissioners into the charities of their county or borough (55 & 56 Vict. c. 15).

SECTION XIII.—CORRUPT PRACTICES IN PUBLIC BODIES.

By the Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict. c. 69)—which was passed subsequently to the inquiry by Royal Commission into the proceedings of the late Metropolitan Board of Works—some stringent provisions for the punishment of corrupt practices in local boards were framed.

It was enacted that (1) every person who corruptly solicits or receives, or agrees to receive, for himself, or for any other person, any gift, loan, fee, reward, or advantage, as an inducement to any member, officer, or servant of a "public body" doing or forbearing to do anything in respect of any matter or transaction in which such public body is concerned; and (2) every person who shall with the like object corruptly give, promise, or offer any gift, loan, fee, reward, or advantage to any person, whether for the benefit of that person or of another, shall be guilty of a misdemeanor (§ 1).

Any person convicted of such an offence shall (i) be liable to imprisonment for two years, or to a fine of £500, or to both imprisonment and fine; and (ii) in addition be liable to pay to such public body the amount or value of any gift, loan, fee, or reward so received by him; and (iii) be liable to be adjudged incapable of holding any public office for seven years, and to forfeit any such office held by him.

Upon a second conviction for a like offence he shall (iv) be further liable to be adjudged for ever incapable of holding any public office, and to be incapable for seven years of being registered as an elector, or voting at a Parliamentary or other election; and (v) if an officer or servant in the employ of any public body he shall also be liable to forfeit his right to any compensation or pension to which he would otherwise have been entitled (§ 2).

A prosecution for an offence under the Act is not to be instituted except with the consent of the Attorney or Solicitor-General in England or Ireland, or of the Lord Advocate in Scotland (§ 4).

The expression "public body" in the Act means any county or municipal council, any board, select vestry, or other body which has power to administer money raised by rates; and "advantage" includes any office or dignity, and any forbearance to demand any money or money's worth, and any aid, vote, consent, or influence, and any promise or procurement of any gift, loan, fee, or reward (§ 7).

PART XV.

CHURCH AND CLERGY.

SECTION I.—THE CLERGY AND THEIR OFFICE.

Candidates for Ordination.

No person can be admitted to Deacon's orders who is not at least 23 years of age, except by the special authority of the Archbishop of Canterbury, signified by the grant of a faculty.

No person can be admitted a Priest until he has attained the age of 24. (1 & 2 Vict. c. 106, § 28.)

Every person who seeks ordination is required by canonical law to provide himself with some sphere of duty in which to exercise his office, this constituting his "title" to orders. The usual titles for deacon's orders are curacies under incumbents of livings and fellowships of colleges at the universities.

Restrictions on Clergymen.

No spiritual person licensed to perform the duties of any ecclesiastical office shall take to farm, for occupation, by himself, any lands exceeding 80 acres in the whole, without permission in writing from the Bishop.

No spiritual person is to trade or deal for gain or profit in any goods, &c., unless such trading or dealing shall be carried on by more than six partners; or unless such trading shall have devolved upon him by bequest, inheritance, settlement, marriage, or bankruptcy; but in no case to act as director or managing partner, or to carry on such trade in person, and to buy or sell in any fair or market. Keeping a school, or acting as director of a benefit or insurance society, is expressly allowed by the Act. (1 & 2 Vict. c. 106, §§ 29, 30.)

An incumbent may not reside out of the house of residence attached to his benefice without the licence of the Bishop. If he does so for more than three months in the year, he is liable to penalties under the Act (1 & 2 Vict. c. 106).

Sequestration.

No levy can be made by the Sheriff under a *Fieri facias* upon an incumbent's goods; but upon a writ being issued to the Bishop of the diocese, he will grant a sequestration, usually directed to the Churchwardens, requesting them to levy the debt due from the incumbent out of the profits of the benefice (see also pp. 35 and 236).

When a sequestration has remained in force for six months, the Bishop is to take order for the performance of the services of the church, and may inhibit the incumbent from so doing (34 & 35 Vict. c. 45).

Sale of Advowsons.

An advowson, not being collative (see *post*, p. 676), may be sold and conveyed in fee simple, fee tail, for life, or for a term of years. But no person in holy orders may be a purchaser (13 Anne, c. 11, § 2). The sale of advowsons is now subject to the provisions of the Benefices Act, 1898.

Benefices Act, 1898.

By this enactment (61 & 62 Vict. c. 48) important changes were made in the law relating to the sale of rights of patronage in the Church, and new powers entrusted to the Bishops over persons nominated to benefices.

Amongst other things, the Act provides that a transfer of a right of patronage of a benefice by way of sale shall not be valid unless (i) it is registered in the registry of the diocese within one month, or within such extended time as under special circumstances the Bishop may allow; unless also (ii) it transfers the whole interest of the transferor (thus preventing the sale as heretofore of the right to the next presentation only); and unless (iii) more than 12 months have elapsed since the last institution to the benefice (§ 1).

No right of patronage may now be sold by public auction, save an advowson sold in conjunction with any manor, or with an estate of not less than 100 acres situate in the same parish as the benefice, or in an adjoining parish, and belonging to the same owner; and any person offering any right of patronage for sale contrary to this provision, or who bids therefor at an auction, will be liable to a fine of £100 (§ 1).

By the same Act, a Bishop may refuse to admit a presentee to a benefice if (i) at the date of the vacancy not more than one year has elapsed since a transfer of the right of patronage, unless it be proved that the transfer was not effected in view of the probability of a vacancy within such year;

or (ii) on the grounds that not more than three years have elapsed since the presentee was ordained deacon; or (iii) that he is unfit for the discharge of the duties of the benefice by reason of physical or mental incapacity, pecuniary embarrassment, grave misconduct, or having been party to any transaction invalid under the Act (§ 2).

Further, a Bishop shall not admit any person to a benefice until the expiration of one month after notice that he proposes to admit such person has been served on the Churchwardens of the parish, who are to publish the notice (§ 2).

For the declaration prescribed by the Clerical Subscription Act, 1865, the Act substitutes (§ 1) a new form of declaration to be made by a clergyman presented to a living; and declares that if any person knowingly make any false statement in such declaration he will be liable to punishment for perjury. Further, if any clergyman be privy to any transfer, presentation, or agreement invalid under the Act, or commit any breach of the promissory part of such declaration (*a*), proceedings may be taken against him under § 2 of the Clergy Discipline Act, 1892 (see *post*, p. 640).

If in the case of an incumbent presented after the commencement of the Act—that is, after January 1st, 1899—his benefice be sequestrated within 12 months after institution, or if sequestration continue for the space of one whole year, or occurs twice in the space of two years, the benefice shall, unless the Bishop otherwise direct, become void (§ 10).

Every benefice with cure of souls which at the commencement of the Act was donative shall as from that date be presentative (§ 12).

Exchange of Livings.

An exchange of livings may be effected. Each incumbent resigns his benefice conditionally into the Bishop's hands, and each is then inducted into the other's benefice. If either party die before both are inducted the exchange is void (*b*).

(*a*) The new form of declaration expressly reserves, as still lawful, an engagement made in pursuance of the Clergy Resignation Bonds Act, 1828, which legalises a presentee's promise to resign in favour of any one named person, or one of two named persons, being "either an uncle, son, grandson, brother, nephew, or grandnephew of the patron" (9 Geo. IV. c. 94, §§ 1, 2).

(*b*) "The deed of resignation, to be executed by each clergyman, should contain a proviso making the resignation conditional on presentation to the other benefice, and declaring it void if such presentation do not ensue. In a recent case a rector was persuaded by the Bishop's legal secretaries to omit the proviso, on the ground that it showed a 'want of

Designation of "Vicar."

The incumbent of every new parish becomes entitled to the designation of "Vicar" *if* he shall become authorised to publish banns of matrimony, and to solemnise marriages, churchings, and baptisms, *and* shall be entitled to receive and have for his own sole use and benefit the entire fees without any reservation thereout. (31 & 32 Vict. c. 117, § 2.)

Resignation or Determination of Curacies.

An incumbent, if he wishes to put an end to the engagement of a curate, is required to give six months' notice to the curate, and to obtain leave of the Bishop. The curate is required to give three months' notice, unless the consent of the Bishop be obtained to a shorter notice. (1 & 2 Vict. c. 106, § 97.)

Upon the vacation of a benefice, by death or otherwise, the deputy of the late incumbent does not cease to be curate. If the new incumbent give him six weeks' notice to quit, at any time within six months of his institution, the curate is dismissed; otherwise his licence from the Bishop holds good.

It is believed that a curacy determines by the institution of the curate to a benefice; but no decision has been given on the point, and in a disputed case the Bishop set the curate free by cancelling his licence (*a*).

Baptismal Fees.

It is unlawful for the minister, clerk, or others, to demand any fee or reward for the celebration of the sacrament of baptism, or for the registry thereof. (35 & 36 Vict. c. 35.)

Burials in Unconsecrated Ground.

Ministers of the Church of England are to be at liberty (without being subject to any censure or penalty) to use the burial service of the Church of England in any unconsecrated burial ground or cemetery. (43 & 44 Vict. c. 41, § 12.)

Plurality of Livings.

An incumbent may not hold more than a single benefice without a dispensation from the Archbishop of Canterbury, but the holder of cathedral or other preferment not involving parochial duty may hold with it a parochial cure of souls.

Subject to obtaining the Archbishop's dispensation, a clergy-

confidence' towards the other parties concerned. The patron took advantage of the omission to treat the benefice as altogether vacant, and the clergyman was thus summarily ejected from a living worth about £400 a year." (Blunt and Phillimore's *Book of Church Law*, 7th edition [1894], p. 252.)

(*a*) Blunt and Phillimore's *Book of Church Law*.

man may hold together any two benefices, the churches of which are within four miles of each other by the nearest road, and the annual value of one of which does not exceed £200. If there be no church on one of the two benefices, the distance between them for the purposes of the Act is to be computed as directed by the Bishop. (48 & 49 Vict. c. 53, § 14.)

Pension to a Retiring Incumbent.

Under the Incumbents' Resignation Act, 1871, an incumbent who has held a benefice for seven years continuously may make a representation to the Bishop, alleging that he is incapacitated by permanent mental or bodily infirmity from the due performance of his duties, and desires to resign; and the Bishop may thereupon appoint commissioners to inquire and report whether the resignation be expedient, and as to the amount of pension to be allowed, not exceeding one-third of the net annual value of the revenues of the benefice. (34 & 35 Vict. c. 44; 50 & 51 Vict. c. 23.)

An incumbent pensioned under the Act of 1871 will lose his pension if he executes and inrols a deed relinquishing his orders under the Act mentioned under the next heading.

Relinquishment of Orders.

A person in holy orders is incapable of election to the House of Commons, although a clergyman who is a peer of Parliament may sit in the House of Lords.

But under the Clerical Disabilities Act, 1870, orders may be "relinquished." By that enactment, a priest or deacon is empowered (i) to execute a deed of relinquishment in the prescribed form; (ii) to cause the deed to be inrolled in Chancery; (iii) to deliver an office copy of the inrolment to his Bishop; and (iv) to give notice of having done so to the Archbishop of the province. Six months after the office copy of the inrolment has been delivered to the Bishop, the deed is to be recorded in the diocesan registry; and thereupon the clergyman by whom the deed was executed becomes incapable of any longer officiating as a minister of the Church of England, and is no longer subject to the disabilities, or entitled to the exemptions, of the clergyman's office. (33 & 34 Vict. c. 91.)

Where a clergyman had executed a deed of relinquishment and had it inrolled, but had not taken any of the prescribed further steps, it was held by the Court that he had "not gone too far," and that the inrolment might be vacated (*a*).

(*a*) *Ex parte a Clergyman*, L. R. 15 Eq. 154.

Clergy Discipline Act, 1892.

Where (i) a clergyman is convicted of treason or felony, or on indictment of a misdemeanor, and on any such conviction is sentenced to imprisonment with hard labour ; or where (ii) a bastardy order is made on a clergyman; or (iii) a clergyman is found in a divorce or matrimonial cause to have committed adultery ; or where (iv) an order for judicial separation, or (v) a separation order, is made against a clergyman : the preferment (if any) held by such clergyman shall, within twenty-one days, be declared by the Bishop to be vacant (§ 1).

If a clergyman either is convicted by a temporal court of having committed an act constituting an ecclesiastical offence, or is alleged to have been guilty of any immoral conduct, or of any offence against the laws ecclesiastical, being an offence against morality and not a question of doctrine or ritual, such clergyman may be prosecuted by any of his parishioners, or by the Bishop, or any person approved by the Bishop, and tried in the consistory court of the diocese (§ 2).

A complaint under the Act shall not be made after five years from date of the offence, except that it may be made within two years after conviction by a temporal court (§ 5).

When a clergyman is, under the Act, adjudged guilty—he may be sentenced to deprivation, and if so sentenced shall be incapable of holding preferment, or he may be sentenced to suspension for a term (§ 6).

Where by virtue of the Act the preferment of a clergyman becomes vacant, the Bishop may also depose him from holy orders, subject to a right of appeal to the Archbishop (§ 8).

Brawling.

Any person guilty of riotous, violent, or indecent behaviour, in any church in England or Ireland, or in a churchyard, burial ground, chapel, or other place of religious worship duly certified under 18 & 19 Vict. c. 81, or who shall molest, vex, or trouble any preacher or minister authorised to preach therein, is liable to a penalty of £5, or to imprisonment for two months (23 & 24 Vict. c. 32, § 2). The provisions of this section apply to persons in holy orders as well as to laymen (*a*).

Obstructing or assaulting a clergyman or other minister in the discharge of his duties is a misdemeanor, punishable by imprisonment for a term not exceeding two years, with or without hard labour (24 & 25 Vict. c. 100, § 12).

(*a*) *Vallancey* v. *Fletcher*, Div. Ct. (1897) 1 Q.B. 265.

SECTION II.—LEGAL AND ILLEGAL RITUAL.

Although the powers of Churchwardens in matters of ritual are not great, their advice and opinion should carry weight, and it may be useful to give here an abstract of some of the decisions of the Courts respecting ornaments, vestments, and ceremonies which have been pronounced illegal, bearing in mind that these decisions must now be considered in conjunction with the case of *Read* v. *Bishop of Lincoln* (1891-2 : see next page).

Illegal Ornaments.

Crucifix on a rood screen (*b*, *g*).* Cross on or so placed as to appear to be connected with the Communion table (*h*). Baldacchino over the Communion table (*h*). Stuffed dove over the Communion table on Whitsun Day (*e*). Figure with lilies to represent the Infant Saviour placed over a credence table at Christmas (*e*). Images or figures with gilt wings placed on or immediately behind a Communion table (*f*). A second Communion table in cases where one already exists, unless such additional table is introduced under a faculty (*f*). Representations of figures forming "Stations of the Cross" (*g*).

Illegal Vestments.

Albs (*a*, *b*, *d*, *g*). Albs with patches called apparels (*e*). Birettas (*f*). Chasubles worn by clergy (*a*, *b*, *d*, *g*). Copes otherwise than during Communion service (*c*). Dalmatics at the Communion service (*a*). Maniples (*e*). Stoles, whether black, white, or coloured (*c*). Tippets of circular form (*e*). Tunics or tunicles at the Communion service (*a*).

Illegal Ceremonies.

Processions, before or after service, of persons wearing illegal vestments, and carrying illegal ornaments, such as crucifixes, banners, lighted candles, incense, or palms (*d*, *e*, *f*, *g*).

Candles lighted on the Communion table during the celebration of the Holy Communion, when not requisite for the purpose of giving light (*c*, *e*, *g*).

The administration of wine mixed with water to communicants (*a*, *f*). The administration of wafers instead of bread to communicants (*a*, *b*, *d*, *g*). The elevation of the paten or cup during the Prayer of Consecration (*c*, *d*, *e*, *f*).

Using bells during the Prayer of Consecration (*e*, *f*).

Kneeling and prostration before the consecrated elements during the Prayer of Consecration (*c*, *e*, *f*, *g*).

Using incense during the celebration of the Holy Com-

* For reference notes (*a*) to (*j*) to this section, see next page.

munion, or for censing persons or things during or in connection with Divine Service (*d*, *e*, *f*).

The Minister standing with his back to the people whilst reading the Epistle or Gospel (*e*, *f*). Reading the Gospel attended by acolytes and a person holding a crucifix (*e*).

Consecrating and receiving the elements with less than three persons communicating (*f*, *g*).

Leaving Communion table uncovered on Good Fridays (*e*).

Introduction of the "Agnus Dei" in the service when not authorised (*d*, *e*, *f*, *g*).

Sign of the cross made by the Minister—(1) during the Creeds; (2) just before the Prayer of Consecration; (3) at the distribution of the Bread and Wine; (4) when pronouncing Absolution; and (5) when pronouncing Benediction (*d*, *e*, *f*).

Blessing and distributing—(1) candles on Candlemas Day; (2) ashes on Ash Wednesday; (3) palms on Palm Sunday (*e*).

Permitting attendants in cassocks and surplices to elevate candles during the Communion service (*f*).

Giving notice of high celebrations and feasts not directed by the Prayer Book to be observed (*e*), or notice of a mortuary celebration for the repose of a sister (*c*).

Interpolating after the Prayer for the Queen in the Communion service a Prayer, Epistle, and Gospel not in the Prayer Book, but selected as appropriate to a mortuary celebration (*e*).

Lawful and Unlawful Practices in Communion Service.

In a case subsequent to the cases cited above, the following practices in the Communion service have been held lawful: Lighted candles; administering wine mixed with water, if mixed before service; eastward position of celebrant; singing the "Agnus Dei"; and ablution, if not part of service. But the following were held unlawful: Concealing manual acts; making sign of the Cross (*j*).

(*a*) See judgment of the Judicial Committee of the Privy Council on appeal from the Court of Arches in *Hebbert* v. *Purchas* (1871).
(*b*) Ditto ditto, *Ridsdale* v. *Clifton* (1877).
(*c*) Ditto ditto, *Martin* v. *Mackonochie* (1868).
(*d*) Judgment of the Dean of Arches (Sir Robert Phillimore) in *Martin* v. *Mackonochie* (1868-1874).
(*e*) Ditto ditto (Sir Robert Phillimore), *Elphinstone* v. *Purchas*.
(*f*) Ditto ditto (Lord Penzance), *Hudson* v. *Tooth*.
(*g*) Ditto ditto (Lord Penzance), *Clifton* v. *Ridsdale*.
(*h*) Ditto ditto (Lord Penzance), *Durst* v. *Marsters*.
(*i*) Judgment of the Consistory Court of London in *Vicar of St. Barnabas, Pimlico*, v. *Bowron*.
(*j*) Judgment of the Archbishop of Canterbury (Dr. Benson) in *Read* v. *Bishop of Lincoln* (1891), confirmed by Judicial Committee (1892).

Use of the Black Gown in Preaching.

A testator having bequeathed £1,500 towards the endowment of a church, subject to an "abiding condition that the black gown shall be worn in the pulpit unless there shall be any alteration in the law rendering it illegal," the incumbent of the church—who contended that the wearing of the black gown was illegal—applied to the Court to sanction the application of the endowment freed from the condition. This application was refused, and the refusal was confirmed on appeal (*a*).

SECTION III.—CHURCHWARDENS AND OTHER LAY OFFICERS OF THE CHURCH.

Churchwardens.

Churchwardens are generally two in number for each parish, and are chosen annually usually, but not necessarily (*b*), in the first week after Easter. Their election is governed by the 89th and 90th Canons of 1603, by which it is provided that Churchwardens shall be chosen by the consent of the minister and parishioners, if it may be; but if they cannot agree then one by the minister and another by the parishioners. (In practice, what is here mentioned as the alternative generally prevails as the rule—that is to say, the parson nominates as a

(*a*) In re *Robinson: Wright* v. *Tugwell*, C. A. (1897) 1 Ch. 85. The Court of Appeal (Russell, L.C.J. and Lindley and Smith, LL.JJ. confirming North, J.) held "that there was no statute, rubric, advertisement, injunction, or canon which prescribed that to preach in the black gown was illegal; and for three centuries down to a comparatively recent date there had been continual user of it by clergymen of the Church of England when preaching. The case of *Ridsdale* v. *Clifton* did not decide that the use of the black gown in preaching was illegal. It contained no allusion to the black gown or to preaching. The sermon did not form part of the administration of the sacrament of the Lord's Supper. Neither could preaching be regarded as one of the other rites of the Church within the words of the advertisement of Queen Elizabeth. The warrant in law for the black gown was constant user for centuries" (see *Law Journal*, 5th December, 1896).

(*b*) *Butt* v. *Fellowes*, 3 Curt., 680.

matter of course one Churchwarden, and the parishioners elect the other.) A curate may stand in the place of the parson for this purpose (*a*).

But in parishes where there has been an immemorial custom for the parishioners to choose both Churchwardens, there the custom takes the place of the Canon, and accordingly, by virtue of this old custom, in most of the old parishes of London the parishioners annually chose both churchwardens.

Under the various Church Building Acts, Churchwardens are to be elected according to the provisions of those Acts; generally one by the minister and the other by the Vestry.

There may by custom be only one Churchwarden, or there may be more than two, but there cannot be a good custom to have *no* Churchwarden.

Where a parish is divided into townships, tithings, &c., there may be a custom to elect many Church or Chapel wardens, and these, though specifically chosen for particular divisions, represent, it seems, the whole parish.

There may be a good custom for the appointment of Churchwardens in other ways besides those mentioned. For instance, a Select Vestry may appoint (*b*), or the old wardens may appoint their successors; or particular parishioners may appoint. There may be a custom to have only one new warden in each year, or only one at a time. Sometimes the lord of the manor has a prescriptive right to appoint, or the outgoing warden nominates two persons, of whom the parson selects one (*c*).

Though a parish has been divided, persons resident in a district cut out of the mother parish still join in the election of wardens for the mother church. This was decided on the ground that such wardens still perform various civil duties for the whole of the original parish (*d*).

The qualification for the office in ancient parishes is the occupation of property in the parish. But personal residence is not indispensable (*e*), unless, perhaps, in the case of new parishes, under § 15 of Lord Blandford's Act (19 & 20 Vict. c. 104). Whether the qualifying property must be a house, or whether land only gives the requisite qualification, is not clear (*f*).

(*a*) *Hubbard* v. *Penrice*, 2 Strange, 1246.
(*b*) *Gibbs* v. *Flight*, 16 L. J. M. C., 73.
(*c*) *Bremner* v. *Hull*, 35 L. J. C. P., 332.
(*d*) *Reg.* v. *Stevens*, 32 L. J. Q. B., 90.
(*e*) See *Ford* v. *Chauncy*, 1 Hagg., C. R., 382 (n). Case of a son in partnership with and boarding with his father, but not, it would seem, rated. Held liable to serve.
(*f*) See Prideaux (15th ed.), 6.

Disqualifications and Exemptions.

Some parishioners are disqualified (*a*) from serving the office of churchwarden, and others are exempt. Amongst the former are aliens (*a*), Jews (*a*), and persons convicted of felony (*a*), fraud, or perjury (*b*).

Amongst those exempt are all persons holding public official positions, Peers, Members of Parliament, Clergymen, Romish Priests, Dissenting Ministers, Sheriffs, Justices of the Peace if acting, Aldermen, Barristers, Solicitors, Physicians, Surgeons, Apothecaries, Officers of the Army and Navy, or Marines, Militiamen, Officers of the Customs or Excise, Officers of the Post Office, and Churchwardens of other places. A person under age is not, it would seem, necessarily disqualified only by reason of his minority.

Churchwardens appointed under 1 & 2 Will. IV. c. 38, and under 6 & 7 Vict. c. 37, are required to be members of the Established Church; but with these exceptions it is not legally necessary that Churchwardens should be members of the Church.

Persons who are not entitled to claim exemption are compellable to serve if the parish insists on electing them. Any person who occupies property, even if non-resident, must serve; so each of several partners carrying on trade in the parish, but non-resident, are liable (*c*). Poverty and bodily infirmity are not even available as excuses. If a Churchwarden ceases to reside another may be appointed in his place, but he is not *ipso facto* disqualified (*d*).

Churchwardens cannot as a rule act separately; both must concur in an act (*e*). This is particularly the case in such weighty matters as prosecutions for brawling, &c., or the disposal of the goods of the church. There are of course many minor matters, *e.g.*, keeping order during service, as to which it would be neither reasonable nor possible in all cases to insist on the personal concurrence of the two Churchwardens, but it is impossible to lay down a particular line.

(*a*) See *Anthony* v. *Seger*, 1 Hagg., C. R., 9. A long list of exempted persons is given in Prideaux (15th ed.), 11.

(*b*) 4 & 5 Wm. IV. c. 76, § 84.

(*c*) *Rex* v. *Poynder*, 1 B. & C., 178.

(*d*) *Ganvill* v. *Utting*, 9 Jur. (o. s.), 1081.

(*e*) Proceedings under the Public Worship Regulation Act, 1874, are expressly excepted from this well-known general rule.

Tenure of Office.

Churchwardens, though nominally elected for one year, may often be in office for longer, as they hold office until their successors are sworn in (*a*).

Admission of Churchwarden.

In the event of a double return the Ordinary must swear in all the candidates elected, and leave them to obtain elsewhere a decision as to their mutual rights, for his functions as regards admissions are ministerial and not judicial.

A Churchwarden duly elected must subscribe to a declaration before the Ordinary. (5 & 6 Will. IV. c. 62, § 9.)

Duties of Churchwardens.

These are very numerous and diversified. They are to present (*i.e.*, to make complaint of) to the Ordinary at his Visitation all breaches of the ecclesiastical laws which may come to their knowledge. This applies to both parson and parishioners, but as to the latter presentments are of rare occurrence.

Many of the Canons of 1604 contain allusions to the duties of Churchwardens, and though some of these are obsolete or illegal, and not binding on the laity, officers like Churchwardens will often do well to be guided by the spirit of the Canons.

The Churchwardens are to take care that no idle persons loiter about in the churchyard or church-porch (Canon 19).

They should see that persons do not disturb the service by walking, or talking, or otherwise misbehaving themselves. The powers of Churchwardens as to this do not depend exclusively on the Canon, for the protection and assistance of the Civil Courts are often available to Churchwardens who interfere to keep order during service.

If the Churchwardens are absent, or being present do not repress indecency, they desert their proper duty (*b*). If, however, in the discharge of these duties the Churchwardens conduct themselves in a riotous, brawling, or improper manner, they will of course be amenable to the authority of the Court (*c*).

The duty of repairing the fences of churchyards may be enforced by indictment against the Churchwardens, as the neglect to do it is a misdemeanor.

Beyond keeping order the Churchwardens have no part to perform during divine service, except to collect the alms. The

(*a*) 1 Burn, Eccl. Law, 410, Canon CXVIII.
(*b*) *Per* Sir W. Scott, in *Cox* v. *Goodday*, 2 Hagg., C. R., 141.
(*c*) *Burder* v. *Selmes*, 1 Eccl. & Adm. R., 114.

rubric requires the money thus collected to be disposed of for such pious and charitable uses as the Minister *and* Churchwardens think fit. If they disagree the Ordinary is to decide.

There is no right on the part of a Churchwarden to forcibly prevent a parishioner entering the Church in order to attend service, even though the Churchwarden may be of opinion that he cannot be conveniently accommodated. And the temporal Courts have jurisdiction over an Action against a Churchwarden for forcibly preventing an inhabitant from entering the Church in order to attend service (*a*).

Pews and Seats.

Subject to the control of the Bishop, the Churchwardens have the sole disposition of the seats in the body of the Church. As to seats in the chancel, whilst the point is not so clear, yet the better opinion is that they stand on the same footing as all other seats (*b*).

Churchwardens of a Church with free seats have authority to direct, for the maintenance of order and decorum, in which of those seats certain classes of the congregation may and others may not sit. A person may be convicted by Justices under 23 & 24 Vict. c. 32, § 2, of violent behaviour in Church, although such behaviour was in assertion of a *bonâ fide* claim of right (*c*).

Although every parishioner has a right to be seated, he has not a right to a pew, and persons not being parishioners have no right to either pew or sitting (*d*).

The law as to pews has never been so well expressed as by Sir John Nicholl in a reported case:—"The general law with respect to pews and sittings in Churches is little understood. Erroneous notions on this subject are current at least in many parts of the country, and have led to much practical inconvenience. By the general law, and of common right, all the pews in the parish Church are the common property of the parish; they are for the use in common of the parishioners who are all entitled to be seated orderly and conveniently, so as best to provide for the accommodation of all.

"The distribution of seats rests with the Churchwardens as the officers, and subject to the control of the Ordinary. Neither the Minister nor the Vestry have any right whatever to inter-

(*a*) *Taylor* v. *Timson*, 20 L. R. Q. B. D., 671.
(*b*) Prideaux (15th ed.), 381.
(*c*) *Asher* v. *Calcraft*, 18 L. R. Q. B. D., 607.
(*d*) In re *St. Columb. Londonderry*, 8 L. T. (N. S.), 861.

fere with the Churchwardens in seating and arranging the parishioners as is often erroneously supposed; at the same time the advice of the Minister, and even sometimes the opinions and wishes of the Vestry, may be fitly invoked by the Churchwardens, and to a certain extent may be reasonably deferred to in this matter" (*a*).

Rogers puts the law of pews in this form: "All the pews in a Church are *primâ facie* at the disposal of the Churchwardens, as the parochial officers of the Ordinary, except the chief seat in the chancel, which custom appropriates to the Rector, whether lay or ecclesiastical, and sometimes to the Vicar; for with regard to the other seats in the chancel it seems the better opinion that their power extends to them also" (*b*).

It is clearly contrary to the foregoing principles for the Churchwardens to allow small families to monopolise a large number of sittings merely because they are families of social importance, unless they have some constant use for many sittings; and Churchwardens will in general find their seating arrangements work most smoothly in the long run by systematically reconsidering once a year the appropriation of all the seats, and making such changes as seem expedient; but this must be done with great discretion, and often with much firmness, for the lack of these qualities may be provocative of great irritation and mischief.

Churchwardens should also be careful to pay attention to the needful wants of the poorer parishioners (especially if old and infirm), as they are not generally able to take care of themselves, and if neglected they are apt to desert their parish Church.

It is a reasonable and legal arrangement to throw open to all comers, seats, even in pews, which when the service commences are not occupied by the persons to whom they have been allotted.

Pew seats in ancient parish Churches are altogether illegal, and Churchwardens who attempt to enforce any sort of pew rent, or payment in respect of seats in such Churches, run the risk of being severely reprimanded by the Ordinary. No concurrence on the part of the parishioners, however many may concur, can render pew rents in any shape, or however disguised in name, legal in ancient parish Churches.

But in Churches for which commissioners of competent authority have fixed a scale of pew rents, and in which,

(*a*) *Fuller* v. *Lane*, 2 Adams, 419, at p. 425.
(*b*) Eccl. Law (2nd ed.), p. 164.

accordingly, pews are let, the usual powers of the Churchwardens are in some measure restrained by the provisions of the Church Building Acts; and in certain cases the actual selling of pews is legalised, although the preferential claims of parishioners over non-parishioners are carefully protected. (58 Geo. III. c. 45, § 79.)

In the case of parishes cut up into new districts it would seem that as a matter of law all inhabitants of such new districts must be treated as parishioners in regard to their claims to seats in the mother Church until such times as the districts become "new parishes," "distinct or separate parishes," or "district parishes."

In "new parishes" persons who shall have claimed, and shall have had assigned to them, sittings in the Church of such new parish, thereby surrender a corresponding number of sittings in the old Church, unless holding the same by faculty or Statute. (19 & 20 Vict. c. 104, § 5.)

There is no similar provision in the case of "distinct and separate" or "district" parishes; but as these are parishes for all ecclesiastical purposes, it is apprehended that the inhabitants cease to have a right to occupy sittings in the old Church, at all events to the exclusion or prejudice of inhabitants in the district remaining connected with the said old Church.

All the pews in a parish Church are the common property of the parish. Upon a person quitting the parish, the right to use a seat in the body of the Church (whatever was the nature and origin of that right) is at an end, because he has ceased to be a parishioner (*a*).

No parishioner or other person having a pew appurtenant to his house can let it to a non-resident person (*a*).

A right to a pew by "faculty," as it is called, cannot be supported (or at least very rarely), not even if the party claiming purchased or erected the pew at his own cost. Such permission in the faculty is illegal.

Pew rents of a district Church, constituted under the Church Building Acts, are livings appointed for ecclesiastical ministers, within the 13 Eliz. c. 20, and a mortgage of them is therefore void (*b*).

Churchwardens may refuse to admit strange preachers to the pulpit (Canon 50), but when Letters of Orders are produced their authority ceases. It appears, however, that these letters are only valid for the diocese of the Bishop who granted them.

(*a*) *Wyllie* v. *Mott*, 1 Hagg., 28; *Rawlinson* v. *Hurst*, 19 L. T., 371.
(*b*) *Leveson, In re*, 47 L. J., Bankcy., 46.

The Churchwardens are to keep a book in which to enter the names of strange preachers, with certain other particulars (Canon 52).

Churchwardens' Accounts.

At the expiration of their year of office, or within a month afterwards, the Churchwardens must place their accounts of receipts and disbursements before the Minister and parishioners in Vestry assembled; and if they are allowed, an entry should be made to that effect, and signed by the chairman and several of the parishioners present. The balance in hand must then be handed over to the successors in office. Churchwardens *de facto* may maintain an Action against a former Churchwarden for money received by him for the parish; and this though the validity of the election of the Plaintiffs to the office be doubtful; and though they are not the immediate successors of the Defendant (*a*).

Church Rates.

By the Compulsory Church Rates Abolition Act, 1868 (31 & 32 Vict. c. 109), no proceeding can be taken in any Court to enforce the payment of a church rate.

But in any parish where at the time of passing the Act (31st July, 1868) a sum of money was due on the security of church rates, or of rates of that nature, to be made in such parish under the provisions of any Act of Parliament, or where any money in the name of church rate was ordered to be raised under any such provisions, such rates may still be made and levied and the payment thereof enforced for the purpose of paying off the money so due, or ordered to be raised, and the costs incidental thereto, until the same shall have been liquidated.

The Act did not affect any enactment in any private or Local Act of Parliament, under the authority of which church rates are made in lieu of tithes, &c., appropriated to ecclesiastical purposes.

Nor did the Act affect Vestries, or the making, assessing, or receiving, or otherwise dealing with any church rate, but only the recovery thereof.

Corporations, trustees, guardians, and committees who, or whose *cestuis que trust*, are in the occupation of any lands, &c., may pay, if they think fit, any church rate made in respect of

(*a*) *R.* v. *Martin Rice*, 1 Salk., 166. As to ownership of church goods, see *Jackson* v. *Adams*, 2 Bing., N. C., 402.

such property, and the same is to be allowed to them in their accounts.

No person who makes default in paying a church rate is entitled to inquire into, or object to, or vote in respect to the expenditure thereof; and if the occupier make default for one month after demand, in payment of such church rate, the owner is to be entitled to pay the same, and until the next succeeding church rate is made, to stand for all purposes relating to church rates (including the attending at vestries and voting thereat) in the place of such occupier.

Church Repairs and Finance.

The management of the finances of a Church is the most troublesome and anxious part of the duties of the Churchwardens, especially since the abolition of compulsory church rates.

For the repairs generally the Churchwardens are responsible, and it also rests with them to see that the requisites for the services are provided. (Canon 80 *et seq.*)

To perform these duties it is proper that they should have access to the building at all reasonable times; but the freehold of the Church being in the Minister, he is entitled to the custody of the key, and the Churchwardens can only have keys of their own by his permission and as his deputies. If he interposes obstacles to their having access to the Church at reasonable times they must make complaint to the proper authority (*a*), but they have no right to obtain keys in defiance of the Incumbent.

Church Bells.

The general powers of Churchwardens over the fabric of the Church does not include the right to interfere with the bells so far as to decide independently of the Minister when they shall be rung for purposes not directly connected with the summoning of the parishioners to worship. It may be taken to be perfectly clear law that the Churchwardens have no power to order the bells to be rung on this or that occasion without the permission of the Minister (*b*).

Sale of Church Property.

The Churchwardens are the custodians of the goods and chattels of the Church, that is to say, all such property is

(*a*) *Lee* v. *Matthews*, 3 Hagg. E. R., 169, at p. 173.
(*b*) *Harrison* v. *Forbes*, 6 Jur. (N. S.), 1353; *Redhead* v. *Wait*, 6 L. T. (N. S.), 580.

vested in them as trustees in a certain sense, on behalf of the parishioners, and they can sue and be sued as a *quasi* corporation in respect of it, but they cannot dispose of any old property without the consent of the parish and the licence of the Ordinary, however good their motives may be.

For instance, they must not sell old furniture, pictures, or ornaments, or utensils, such as bells, railings, communion table, pulpit, chairs, building materials, &c., even for the purpose of using the proceeds for procuring new articles of the like sort. Churchwardens are often guilty of great misconduct and irregularity in matters of this kind, without perhaps knowing that they are doing wrong or wishing to carry out illegal bargains.

Church Furniture and Fittings.

There are certain things which the Churchwardens are bound by law to provide, quite apart from fittings and decorations, which are optional (*a*).

They are to take care that the Church be provided with a convenient and decent communion table, and that the same be from time to time kept and repaired in a sufficient and seemly manner, and be covered in time of divine service with a carpet of silk or other decent stuff, thought fit by the Ordinary, and with a fair linen cloth to spread thereon at the ministration of the Lord's Supper (Canon 82 ; Rubric).

The communion table (*b*) must be a table in the ordinary sense of the word, made of wood, flat, movable, capable of being covered with a cloth, at or around which the communicants may be placed (*c*). A stone altar is not a communion table within the meanings of the Rubric and Canon, and whether fixed to the freehold or not cannot lawfully be substituted for a movable wooden table (*d*), nor is a table with a cross attached

(*a*) As to the authority of the Canons, Dr. Lushington in *Westerton* v. *Liddell* (4 *W. R.*, 167), speaking especially of Canon 82, said, "A Canon in these matters is all powerful, except to repeal or alter an Act of Parliament"; and in the case of *Cooper* v. *Dodd* (7 N. E. C., 514), Sir H. J. Fust held the 68th Canon to be binding on the clergy ; and see the observations of Lord Hardwicke in *Moore* v. *Moore* (2 Atk. 197), and those of Lord Eldon in *Priestley* v. *Lamb* (6 Vesey, 421).

(*b*) "In a Roman Catholic Church there is an altar, or place where the priest offers sacrifice. In a Protestant church there is no altar in the same sense ; but there is a communion table on which bread and wine are placed that the parishioners may come round it to partake of the Sacrament, the Supper of the Lord."—See the Judgment of the Privy Council in *Parker* v. *Leach*, 1 L. R. App. Cas., 312.

(*c*) *Liddell* v. *Westerton* (P. C.), 5 W. R., 470.

(*d*) *Faulkner* v. *Litchfield and Stearn*, 1 Roberts, 184. *Westerton* v. *Liddell* (Cons.), 4 *Week. Rep.*, 167. *Liddell* v. *Westerton* (Arches), 5 *Week. Rep.*, 179. *Ditto* (P. C.), 5 *Week. Rep.*, 470.

to it, although made of wood and movable, lawful (*a*); but a massive communion table, provided it be of wood and movable, is not contrary to the ecclesiastical law (*b*), nor can it be objected that the table is highly carved (*b*), nor will the Ordinary interfere on account of its shape (*b*), except perhaps in event of its prominently resembling an altar tomb (*c*). Sometimes there is placed upon the table a movable ledge of wood ("super altar") to hold candlesticks and flowers; it is not clear whether such a ledge is legal or not (*d*).

During the administration of the Holy Communion the table is to be covered with a fair white linen cloth (*e*), without any lace or embroidery of any sort (*f*). In fact any addition whatever is illegal (*g*).

Sidesmen.

These may be regarded as Deputy Churchwardens, and where they are appointed they perform some of the duties of Churchwardens. This however is rather by the modern usage which has led to their revival, for their appointment having fallen into disuse for two or three centuries, it is not altogether clear how they would be treated by the Courts of Law if they were to come into contact with the Courts.

Their present functions are to assist in keeping order in the Church during service, and generally to assist or superintend the paid vergers and pew-openers. They are elected annually, and their qualifications and disqualifications may be considered the same as those of Churchwardens. They should make before the Ordinary a declaration similar to that made by Churchwardens. (5 & 6 Will. IV. c. 62, § 9.)

Parish Clerks.

These seem originally to have been real "clerks"—*i.e.*, persons in holy orders—acting as assistants to the beneficed clergy. The necessity for providing the beneficed clergy with persons to assist them permanently in minor duties became at length generally recognised, and the name of Clerk was retained though the custom of choosing persons in holy orders ceased.

The Parish Clerk is appointed by the Minister, who is to signify his choice to the parishioners during divine service on the Sunday after he has made the appointment (Canon 91).

(*a*) *Liddell* v. *Westerton* (P. C.), *ante*.
(*b*) *Westerton* v. *Liddell*, *ante*.
(*c*) See the observations of Dr. Lushington in *Westerton* v. *Liddell* (Dr. Bayford's Report, p. 21).
(*d*) See *Liddell* v. *Beal*, 14 Moore, P. C., 1.
(*e*) Rubric.
(*f*) *Westerton* v. *Liddell* (Arches & P. C.), *ante*.
(*g*) *Per* Dr. Lushington in *Westerton* v. *Liddell*.

A Clerk must be at least 20 years of age and known to the minister as of honest conversation, and sufficient for his reading and writing, and also skill in singing, if it may be.

If the Minister be under suspension, or if the benefice be vacant, the licensed curate in charge appoints (*a*). But in case of sequestration, the incumbent, and not the curate in charge, is the proper person to appoint a new parish clerk (*b*). In some places the parishioners in vestry assembled appoint.

A Parish Clerk may be dismissed for sufficient cause by those who appointed him. If unjustly dismissed he may apply for a *Mandamus* to the Churchwardens to restore him (*c*).

A modern statute has supplemented the control exercisable over Parish Clerks at Common Law by declaring that if any Church Clerk, Chapel Clerk, or Parish Clerk, not in holy orders, be guilty of any wilful neglect or misbehaviour in his office; or by reason of any misconduct is an unfit or improper person to hold the same, the archdeacon or other ordinary may summon such Clerk before him and inquire into the matter. On being satisfied that sufficient cause exists, the archdeacon may issue a certificate declaring the office vacant. (7 & 8 Vict. c. 59, § 5.)

The Clerk's fees in ancient parishes or places depend on custom, and arise chiefly from marriages and burials. Though fees at churchings and baptisms are not uncommon they stand on a different footing from the former, and are not demandable as of right.

The Sexton.

This name is the modern equivalent for "sacristan," the man who takes care of the Church and its fittings and movable property. Usually the Incumbent appoints him, but there is great diversity of practice as to this, and by custom the appointment may be vested in the parishioners or the Churchwardens (*d*).

The appointment is supposed to be for life, but a custom for the parishioners to remove the Sexton at pleasure has been held good (*e*). He is punishable by the Ecclesiastical Court, though where he holds office for life he cannot be deprived by that Court (*f*). His fees are usually settled by the Vestry and paid by the Churchwardens (*g*).

(*a*) Prideaux (15th ed.), 178.
(*b*) *Lawrence* v. *Edwards* (1), L. R. (1891) 1 Ch. 144.
(*c*) *Rex* v. *Ashton*, Sayer, 159.
(*d*) See *Rex* v. *Liverpool*, 3 T. R. 118; *Causfield* v. *Blenkinsop*, 4 Ex. 134.
(*e*) *Rex* v. *St. James's, Taunton*, 1 Cowp., 413.
(*f*) 2 Roll. Abr., 235. (*g*) *Kemp* v. *Attenborough*, 30 L. T. 211.

SECTION IV.—ECCLESIASTICAL PROPERTY.

Tithes and Tithe Rent-charge.

Tithes, like advowsons, are a species of incorporeal hereditaments, and (as property) are capable of being held or owned by laymen as well as ecclesiastics. In some parishes, the tithes now belong, in whole or in part, to persons professedly not members of the Church of England.

Tithes are defined as "the tenth part of the increase yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants." The first species is usually called *prædial*, the second *mixed*, the third *personal*. (See under "Tithes" in DICTIONARY, *post*, p. 702.)

Tithes are due to the parson of common right, unless by special exception, but (as already stated) have in many cases been alienated from their original grantee. A Vicar pays no tithes to the Rector, nor the Rector to the Vicar; but their tenants or lessees must pay tithes, although the lands when in the occupation of Rector, Vicar, or other ecclesiastical person, would be exempt (*a*).

Great and Small Tithes.

In general the great tithes are termed "rectorial," as belonging to the Rector (though frequently in the hands of a lay impropriator), and the small tithes "vicarial," as belonging to the Vicar. No clear line of demarcation, however, seems ever to have been drawn, though tithes of corn, hay, and wood are generally comprised under the head "great tithes," and tithes mixed and personal under the head "small tithes." It often happens that an endowment exists, vesting all the small tithes *eo nomine* in the vicar (*b*).

Commutation and Redemption of Tithes.

By the Tithe Commutation Act, 1836 (6 & 7 Will. IV. c. 71), and by various Acts since passed for its amendment, a plan is provided for commuting the tithes of every parish into a *rent-charge*, the amount of which is to be adjusted annually, according to the average price of corn.

By the Commutation of Tithes Amendment Act, 1878, it was rendered compulsory as regards lands required for public purposes—such as places of worship, cemeteries, schools, town-halls, &c.—that the rent-charge be redeemed for a sum of money equal to 25 times the amount thereof. Facilities were

(*a*) 2 Black. Comm., 28 *et seq.* (*b*) 2 Black. Comm., 24, n.

also afforded for freeing any other lands of rent-charges at the same rate. By Acts of 1885 and 1886, further facilities were afforded for the redemption of tithe, which is now to be carried out under the directions of the Board of Agriculture (*a*).

Tithes of District Churches.

The Rector or Vicar of any rectory or vicarage may enter into an agreement in writing with the Incumbent of a district church to annex the tithes, or part of the tithes, to such district church, in consideration of a sufficient compensation for the same to such Rector or Vicar or his successors. The Bishop, the patron, and the Ecclesiastical Commissioners must concur. (28 & 29 Vict. c. 42.)

Tithe Act, 1891.

By this enactment (54 Vict. c. 8) which came into operation on 26th March, 1891, tithe rent-charge is now payable by the owner of the lands on which it is charged, and not (as heretofore) by the occupier; and any contract between the occupier and the owner for payment by the occupier is void (§ 1).

As to rent-charge due April 1, 1891, and all future payments as they become due, in case such rent-charge shall be in arrear for not less than three months, the titheowner may seek the aid of the County Court of the district, which Court, after service duly made, and after giving opportunity for the owner of the lands to be heard, shall order the sum demanded or such part as appears to be due to be recovered, together with costs. The Court is to carry out its order by appointing a receiver of the rents and profits of the lands, who shall have the same power as in other cases which come under the jurisdiction of the Court (§ 2). No power, however, is given to the Court to order the sale of the lands.

Any rate to which tithe rent-charge is subject is now to be assessed on, and may be recovered from, the owner instead of (as heretofore) from the occupier of the lands from which such tithe rent-charge issues. But should the rate-collector satisfy the County Court that he is unable to recover any rate assessed upon tithe rent-charge, the Court may, after giving due notice to the titheowner and owner of the lands, order the owner to pay the tithe rent-charge to the collector until the amount of the rate, with costs, is paid (§ 6).

Appeal lies from the County Court to the High Court (§ 7). The Act does not extend to Scotland or Ireland (§ 12).

(*a*) The offices of the Board are at 3 St. James's Square, London, S.W.

Ecclesiastical Dilapidations.

The Incumbent of a benefice is bound to keep the buildings belonging thereto in good and substantial repair, and to restore and rebuild them when necessary (*a*). In case of default, an Action lies at common law, by the custom of England, at the suit of his successor to recover the value of the dilapidations (*b*). The custom was extended to Wales by statute (*c*).

Dilapidation is when an Incumbent suffers the parsonage house or out-houses to fall down, or be in decay, for want of necessary reparation; or pulls down or destroys any of the houses or buildings belonging to his living, or destroys the woods, trees, &c.; for it is said to extend to the committing or suffering of any wilful waste in or upon the inheritance of the church (*d*).

By an Act of 1871 (34 & 35 Vict. c. 43) provision was made to secure "the better sustentation of houses of residence, chancels, and other buildings which Incumbents of ecclesiastical benefices, and other ecclesiastical persons are by law or custom bound to maintain in repair, as also for the relief of such persons and their representatives" (§ 4). These comprehensive words bring within the operation of the Act a great variety of property, including many things which would usually go as "landlord's fixtures."

The Act provides that inspections may take place even when the benefice is not vacant. Upon the complaint in writing of the Archdeacon or of the Rural Dean, or of the patron of the benefice, that the buildings of the benefice are in a state of dilapidation, or at the request of the Incumbent, the Bishop may direct a surveyor to inspect (§ 12).

Within one month of his inspection the surveyor is to send his report to the Bishop, and a copy of it to the Incumbent. If he reports that any works are needed for putting into repair any dilapidated building belonging to a benefice, he is to describe in detail the works needed, give an estimate of their probable cost, and state within what time they ought to be executed. An Incumbent may appeal against a report to the Bishop, who may take advice on technical or legal points before he gives his decision. When given, his decision, which is to be in writing, is final (§§ 14—16).

Powers are conferred on the Governors of Queen Anne's

(*a*) *Wise* v. *Metcalf*, 10 B. & C., 299.
(*b*) *Bunbury* v. *Hewson*, 3 Ex., 558. (*c*) 27 Hen. VIII. c. 26.
(*d*) Digge, P. C., by Ellis, 134; cited by A. J. Stephens, Laws of Clergy, 436.

Bounty to lend money at an Incumbent's request, and with the consent of the Bishop and patron, on the security of the possessions of the benefice, towards defraying the expenses of works certified to be necessary. But the amount to be lent is never to exceed in the whole three years' net income of the benefice. If an Incumbent refuses or neglects duly to execute any prescribed repairs, the Bishop may raise the money required by sequestration. (34 & 35 Vict. c. 43, §§ 17—23; 35 & 36 Vict. c. 96, § 1.)

Within three calendar months after the avoidance of a benefice, unless the late Incumbent shall under the Act be free from all liability for dilapidations, the Bishop shall direct the surveyor to inspect the building and report what sum, if any, is required to make good dilapidations to which the late Incumbent or his estate is liable (§ 29).

The surveyor is to send a copy of his report to the new Incumbent and to the late Incumbent or his executors, specifying the works needed, and probable cost. Objections may be taken to the report on matters of fact or of law; and upon the Bishop making an order the new Incumbent is to cause the repairs specified in the order to be executed within 18 months, unless with the consent of the patron and the Bishop he decides to rebuild the premises, in which case he may use for the rebuilding the money which stands to his credit (§§ 30—42).

An Incumbent who has been "reported" and "ordered" is protected from further liability for five years (§ 47).

An Incumbent is bound to insure the parsonage house and farm and other buildings, and also the chancel of the church where he is liable for the repair of the chancel (§§ 54—57).

Sale of Glebe Lands.

By the Glebe Lands Act, 1888 (51 & 52 Vict. c. 20), facilities are given to Incumbents to sell, with the consent of the Bishop, Patron, and Land Commissioners [now the Board of Agriculture], any glebe land belonging to a benefice, and for the investment of the proceeds in the purchase of Government securities, or other public stocks, as mentioned in the Act, for the benefit of the benefice.

Before approving of a sale the Commissioners are to require such notice of the proposed sale to be given to the parishioners as they think sufficient.

PART XVI.

TAXES, EXCISE LICENCES, AND DEATH DUTIES.

SECTION I.—ASSESSED TAXES AND EXCISE LICENCES.

Income Tax.

By the operation of the several Finance Acts, 1894 to 1898, the rate of income tax (including landlord's property tax) is fixed as from 6th April, 1898, at 8*d.* in the £ for all Schedules (*a*); but in the case of Schedule B it is to be payable on *one-third only* of the annual value of the lands occupied, except in the case of nurseries and market-gardens; and incomes not exceeding £160 are to be exempt from the tax.

As to incomes over £160, by the Finance Act 1898 (61 & 62 Vict. c. 10), abatements are to be allowed of £160 on incomes not exceeding £400; of £150 on incomes between £400 and £500; of £120 on incomes between £500 and £600; and of £70 on incomes between £600 and £700: no abatement being allowed on incomes over £700.

By the same Act (§ 10), the landlord or immediate lessors of lands, houses, or buildings may apply to be assessed in respect thereof instead of the occupier; but such assessment, if so made, is to be without prejudice to the right of distraint, if necessary, as if the occupier were assessed; and if the occupier pay, he may deduct the amount out of rent.

Repayment of Income Tax (*b*).

When income tax has been paid in excess of the amount properly chargeable, or is otherwise repayable, claim for repay-

(*a*) Schedule A is in respect of income from ownership of lands; Schedule B, in respect of income from occupation of farms; Schedule C, of dividends from Government funds; Schedule D, of profits from professions and trades; Schedule E, of income derived from public offices and corporate or quasi-corporate bodies.

(*b*) Different limits from those mentioned in the instructions under this heading apply to cases for periods previous to 6th April, 1898.

ment may be made in one or other of several ways, according to circumstances and the nature of the claim :—

A. Claims of repayment may be preferred *through the Surveyor of Taxes* for the district in which the claimant resides (5 & 6 Vict. c. 35, § 169) in the following cases :—

(1) By any person whose total income is less than £160 per annum, in respect of any duty charged upon the income (5 & 6 Vict. c. 35, §§ 164, 165) ;

(2) By any person whose total income, although amounting to £160, is less than £700 per annum, in respect of the duty upon the amount of such income upon which abatement is allowed, as indicated on the last page (39 & 40 Vict. c. 16, § 8) ;

(3) By the Trustee of any minor, person incapacitated by bodily infirmity, or married woman permanently separated from her husband, where the income of the person upon whose behalf the claim is made is below £160 (or £700) per annum (5 & 6 Vict. c. 35, §§ 41, 170) ;

B. Persons (or their Trustees in the cases referred to in the last preceding paragraph) who are not resident in the United Kingdom, having a total income derived from the United Kingdom of less than £160 (or £700) per annum, may prefer claims of repayment *through the Secretary* (*Repayment Branch*) *Inland Revenue, Somerset House.* (5 & 6 Vict. c. 35, § 169.)

In all the above-mentioned cases vouchers should be annexed to the claims, showing—

(1) Where exemption is claimed, that the duty claimed to be repaid has actually been paid to the Revenue ; or

(2) Where abatement is claimed, that duty has been paid upon the claimant's total income : except that, as regards income from the Public Funds, English Government Annuities, or Dividends on Colonial or Corporation Stocks inscribed in the Bank of England, vouchers will not be necessary.

Note.—The income of a married woman residing with her husband is deemed to be his income for Income Tax purposes (5 & 6 Vict. c. 35, § 45), notwithstanding any settlement or the provisions of the Married Women's Property Act, 1882 ; and the joint income of husband and wife must be included in the claim, which should be preferred by the husband (*a*).

(*a*) But by the Finance Act, 1897 (60 & 61 Vict. c. 24, § 5), where the total joint income of a husband and wife does not exceed £500, a wife may separate her claim for exemption or abatement from that of her husband on account of profits derived, by means of her own personal labour, from any profession, employment, or vocation under Schedule D, or from any office or employment under Schedule E.

C. Duty may be reclaimed *through the Secretary* (*Repayment Branch*), *Inland Revenue, Somerset House*, in the following cases :—

(1) In respect of the duty upon Life Insurance premiums paid to companies registered in the United Kingdom, to the extent of one-sixth of the claimant's whole income (16 & 17 Vict. c. 34, § 54) ;

(2) By the Treasurer, or other proper officer of any charity, in respect of duty paid upon income arising from either dividends or lands, and applied to charitable purposes only (5 & 6 Vict. c. 35, §§ 61, 88, 105). In each case the claim must be declared before either a Commissioner of Taxes, a Justice of the Peace, or a Minister of Religion ;

(3) By the Secretary of any society registered under the Friendly Societies Acts, and not assuring any sum exceeding £200, or granting any annuity exceeding £30, to any individual, in respect of any taxed income. (5 & 6 Vict. c. 35, § 88 ; 16 & 17 Vict. c. 34, § 49 ; 52 & 53 Vict. c. 42, § 12.) The statement must be certified by the Treasurer of the society.

D. Claims may also be preferred *through the District Surveyor of Taxes*, (1) by the owners of Rent Charge, or recipients of ecclesiastical income, in respect of the duty upon Land Tax, or Parochial Rates, charged upon the Tithe Rent, or on account of disbursements for First Fruits, Tenths, Duties and Fees on Presentation, Procurations, Synodals, and repairs of collegiate churches, or chancels of churches (5 & 6 Vict. c. 35, § 60) ; (2) by any clergyman, or minister of any religious denomination, in respect of expenses wholly, exclusively, and necessarily incurred in the performance of his ministerial duties, or functions. (16 & 17 Vict. c. 34, § 52.)

E. Where claims are made in respect of duty upon agricultural rent remissions, they should be preferred *through the Secretary* (*Repayment Branch*) *Inland Revenue, Somerset House.*

Note.—In all the foregoing cases, the claim must be preferred *within three years* after the end of the year of assessment to which the claim relates. (23 & 24 Vict. c. 14, § 10.) Forms of claim, and full instructions, may be obtained in each case by intending claimants from the District Surveyor of Taxes.

F. In the case of duty paid on profits from trades, professions, etc., under Schedule D (5 & 6 Vict. c. 35, § 133), if during the year of assessment the income of any person assessed falls below the sum assessed, and is also less than that amount upon the average of the last three years, *including the year of assessment*, he may prefer an appeal *to the Commissioners by whom the assessment was made*, for a reduction (or, if payment of

the full duty has been made, for repayment) to the amount of profits according to the average of the three years including the year of assessment. (28 Vict. c. 30, § 6.) The appeal to be made within, or at the end of, the current assessment year.

G. Where an actual loss has been incurred in the year of assessment, and the case does not fall to be disposed of under the previously quoted sections, repayment can also be claimed of so much duty as has been borne for the assessment year upon other sources of income, equal to the duty upon the amount of such loss. (53 & 54 Vict. c. 8, § 23.) Should the net income as a result of the loss fall below £160, or £700, total exemption, or allowance of the due amount of abatement, as the case may be, can also be claimed. Notice of appeal must be given *to the District Surveyor of Taxes* within six months after the end of the year of assessment.

H. Occupiers of lands for the purpose of husbandry only, whose profits fall below the sum assessed under Schedule B, may prefer an appeal *to the District Commissioners* for a reduction, or repayment, in accordance with the actual result of the year of assessment; and, if a loss has been sustained, similar further relief may be claimed with that referred to in the preceding case. (14 Vict. c. 12, § 3; 43 & 44 Vict. c. 20, § 52.)

Inhabited House Duty.

Annual duty on inhabited houses used for *business*—

Of the annual value of £20 and not exceeding £40,				2*d.*	in the £.
Exceeding	,,	£40	,,	£60, 4*d.*	,,
,,	,,	£60		6*d.*	,,

But on *private* houses, the duty is at the rate of 3*d.*, 6*d.*, and 9*d.* respectively, on the same scale of rental.

Where a person was assessed on a rent of £90 per annum, and appealed on the ground that £10 was added to the rent because of a free railway ticket to the occupier, it was held that she was only liable to be assessed on £80 per annum (*a*).

A co-operative society is liable for house duty in respect of premises occupied as a warehouse by their manager (*b*).

So also is the committee of a mechanics' institute in respect of a residence for their librarian, communicating internally with the rest of their premises, which were not rated (*c*).

A tradesman is not liable for house duty in respect of a lock-up-house used solely for business, and never inhabited (*d*).

Special exemptions from the duty are obtainable by lodging-house keepers registered with the Inland Revenue Commis-

(*a*) Assessed Taxes, Cases on Appeal, No. 2719. (*b*) Do. do., No. 2687.
(*c*) Do. do., No. 2689. (*d*) Do. do., No. 2643.

sioners; and for any house used for providing separate dwellings at rents not exceeding 7*s.* 6*d.* a week, upon a certificate to be obtained from the Medical Officer of Health for the district. (53 Vict. c. 8, §§ 26.)

Men-servants.

For every male servant, the yearly licence duty is 15*s.*

A person is liable to be charged for a man-servant in respect of a labourer in husbandry, employed daily to drive a pony-carriage. And a tradesman is liable in respect of a man who cleans and looks after a pony and carriage, used for pleasure as well as for business (*a*). But not if the vehicle be used solely for the conveyance of goods in business (*b*).

Where a tradesman occasionally employs a man to groom the horse and clean the carriage used in the business, he is liable to be charged with the duty in respect of a servant (*c*), and this, too, although it is not always the same man (*d*).

Where a farmer was charged with a duty of 10*s.* 6*d.* under Schedule C, in respect of a servant under 18 years of age, and it appeared that the boy was employed to clean boots and shoes, knives and forks, and to attend on the servants in the kitchen, it was held that the farmer was liable (*e*).

A licensed victualler is liable in respect of a potboy employed in domestic duties, who occasionally waits upon guests (*f*).

The lessee of shooting is chargeable for a gamekeeper of the lessor, if he is paid and employed by the lessee (*g*).

Armorial Bearings.

For use of armorial bearings (including any "crest or ensign, by whatever name the same shall be called"), the yearly licence duty is 21*s.*; and if used on any carriage, 42*s.*

An undergraduate at a university is liable to be assessed for armorial bearings in respect of a family crest on articles his own property; and the fact of his being a minor, and that the duty on armorial bearings is paid by his father, is no ground for relief (*h*).

A person is liable in respect of the device of a lion engraved on his note paper, although there be no scroll (*i*). A person, though a tradesman, is liable for wearing a signet ring with a lion rampant only engraved thereon (*k*). A person is liable for armorial bearings in respect of a crest upon articles of plate purchased at an auction and afterwards kept and used (*l*).

(*a*) Assessed Taxes, Cases on Appeal, Nos. 2605, 2616.
(*b*) Do. do., Nos. 2619, 2620, 2621.
(*c*) Do. do., No. 2729.
(*d*) Do. do., No. 2730.
(*e*) Do. do., No. 2726.
(*f*) Do. do., No. 2727.
(*g*) Do. do., No. 2661.
(*h*) Do. do., No. 2755.
(*i*) Do. do., No. 2756.
(*k*) Do. do., No. 2755.
(*l*) Do. do., No. 2634.

Carriages.

The cost of yearly licence for a carriage having four or more wheels, and drawn by two or more horses, or fitted to be drawn by mechanical power, is 42*s.*; for a carriage having four or more wheels, and drawn by one horse only, 21*s.*; for a carriage having less than four wheels, 15*s.*; and for a hackney carriage, 15*s.*

A tradesman is liable to be assessed in respect of a two-wheeled carriage, adapted as well for the carriage of persons as of goods, and shown to have been so employed (*a*).

A farmer is liable to be assessed for a carriage kept principally for conveying the family to church, though occasionally used for the conveyance of agricultural produce (*b*).

A farmer and general merchant is liable in respect of a dog-cart, though used solely for the purposes of business (*c*).

A tradesman is not liable for a carriage never used except for the conveyance of goods, although occasionally the driver has "given a ride" to persons on the road (*d*). Nor is a tradesman liable in respect of a carriage used in calling for orders (*e*).

Where a carriage is kept and used jointly by two persons (not partners), carrying on separate trades, each person is liable to be assessed for the full duty (*f*).

Licences for Sale of Intoxicating Liquors.

Excise licences for the sale by *retail* of intoxicating liquors to be consumed either on or off the premises are granted upon the production of a Justices' certificate authorising the holding of an excise licence (9 Geo. IV. c. 61, § 1); but a Justices' certificate is not required for the sale by retail of wine for consumption off the premises by any person who holds an excise wine-dealer's licence (23 Vict. c. 27, § 3; 35 & 36 Vict. c. 94, § 73, ss. 1).

Justices may refuse to renew a licence, and they are not bound to state their reasons (*g*).

Licences obtainable at Post Offices.

Dog, Gun, and Private Brewers' Licences are issued at all Money-order offices in England and Scotland.

Male Servants, Carriages, and Armorial Bearings Licences, at all Money-order offices in England.

Game and Gamekeepers' Licences, at the London head district offices and at some Money-order offices in the Provinces.

(*a*) Assessed Taxes, Cases on Appeal, No. 266. (*b*) Do. do., No. 2665.
(*c*) Do. do., No. 2666. (*d*) Do. do., No. 2664. (*e*) Do. do., No. 2668.
(*f*) Do. do., No. 2670.
(*g*) *Sharpe* v. *Wakefield*, C. A. 22 Q. B. D. 239; H. L. (1889) A. C. 193.

SECTION II.—LEGACY, SUCCESSION, AND DEATH DUTIES.

Finance Acts, 1894 *and* 1896.

Important changes were made by the Act of 1894 (57 & 58 Vict. c. 30) in the law concerning the duties payable upon property "passing" at the death of the owners thereof; these changes affecting all property passing on the death of persons dying *on or after 2nd August*, 1894. (In the case of deaths which occurred on or before 1st August, 1894, Probate duty under the old law is payable as if the Act had not passed, as well as Legacy and Succession duties, where applicable.)

Some modifications in the Act of 1894 have been made by an Act of 1896, as to which see *post*, pp. 669-672.

Death Duties before 1894.

The duties payable previously to the Act of 1894 are known as (i) Probate, (ii) Legacy, and (iii) Succession duties. *Probate* duty is in the nature of a tax on the net value of the personal estate, after deducting debts. *Legacy* duty is a tax payable on legacies, rising from one to ten per cent. on the amount, according to the degree of relationship with the testator. *Succession* duty is payable whenever a person (styled the successor) becomes—whether under a will just proved, or an earlier will, or under a settlement otherwise than by will—beneficially entitled to property upon the death of another (the predecessor), the duty previous to the Act of 1894 varying from 1½ per cent., in case of a lineal descendant, to 11½ per cent. in case of a stranger in blood; with (since 1889) an extra £1 per cent. on properties over £10,000.

In what has been commonly known as Probate duty there has comprised not only the duty properly so called (varying from 2 to 3 per cent.), and payable as a stamp duty on the executor's affidavit (44 & 45 Vict. c. 12), but also an Account duty of like amount levied on *donationes mortis causâ*, and voluntary gifts and settlements made *within twelve months of the death* (44 & 45 Vict. c. 12, § 38); as well as an Estate duty of an extra 1 per cent. levied since 1889 where the property included in the executor's affidavit exceeds £10,000 (52 Vict. c. 7, § 5).

But now by the Finance Act, 1894, a *new* Estate duty has been substituted for all three duties above-mentioned of the nature of Probate duty, while the Legacy and Succession duties remain, subject to some modifications.

The rates for the two last-mentioned duties, at the date of the passing of the Act of 1894 were as follows:—

Table of Legacy and Succession Duties.

Description of Legatee or Successor.	Legacy Duty.	Succession Duty.		
		1. Where death before 1st July, 1888.	2. Where death on or after 1st July, 1888.	3. Where death on or after 1st June, 1889, and Value of Succession over £10,000.
	Per cent. £	Per cent. £	Per cent. £ s.	Per cent. £ s.
Children of the Deceased and their Descendants, or the Father or Mother, or any Lineal Ancestors of the Deceased, or the Husbands or Wives of any such Persons .	1	1	1 10	2 10
Brothers and Sisters of the Deceased, and their Descendants, or the Husbands or Wives of any such Persons	3	3	4 10	5 10
Brothers and Sisters of the Father and Mother of the Deceased and their Descendants, or the Husbands or Wives of any such Persons	5	5	6 10	7 10
Brothers and Sisters of a Grandfather or Grandmother of the Deceased, and their Descendants, or the Husbands or Wives of any such Persons	6	6	7 10	8 10
Any Person in any other Degree of Collateral Consanguinity, or Strangers in Blood to the Deceased	10	10	11 10	12 10

Alterations made by the Act of 1894.

The *increased* Succession duties payable since 1888 (as shown in cols. 2 and 3 of Succession Duty in the Table) will not be payable in future; and with this Table for reference the effect of the alterations made by the Finance Act, 1894, will be more readily understood. They may be stated as follows:—

(1) A new Estate duty of from 1 to 8 per cent, increasing with the value of the property charged (see *post*, p. 669), and chargeable on all kinds of property, real as well as personal, and whether settled or not settled, is now to be paid.

(2) In the new Estate duty are merged (i) the Probate and

Account duties above mentioned; (ii) the *additional* Succession duty of 1888 (see column 2, Succession duty, in Table); and (iii), the extra Estate duty of 1889 on Probates and Successions exceeding £10,000; all such duties being now abolished in the case of persons dying on or after August 2nd, 1894.

(3) Where the new Estate duty is paid, children and other descendants, and parents and other ancestors, will be exempt from both Legacy and Succession duties. Succession duties are also further assimilated to Legacy duties by the assessment of the duty, in the case of succession to an interest of which the successor is competent to dispose, upon the principal value of such interest instead of (as heretofore) upon the capitalised value of a life annuity, and by the charge of interest upon instalments. Estates of £1,000 or less are relieved from both Legacy and Succession duties, as well as from Settlement Estate duty (see *post*, p. 669). With these exceptions, Legacy and Succession duties remain as before.

(4) A further Settlement Estate duty, at the rate of 1 per cent., is imposed on property passing by will or settlement for a life interest only, except where the only life interest is that of a wife or husband; but this duty is to be payable once only during the continuance of the settlement, and in the case of a settlement of money or securities the amount of the 5*s.* *ad valorem* stamp duty charged thereon under the Stamp Act, 1891, may be deducted from the settlement estate duty.

Property liable to Estate Duty.

The new Estate duty will be payable, in the words of the Act, on *all* property "passing on the death," so that by the Act duty is imposed, not only on the property of which a testator could dispose, but on all property in his possession at the date of his death, and on all gifts made within twelve months of the death (*a*). The following property, however, is expressly excepted:—

(1) Personal property settled by a will or disposition made by a person dying on or before the 1st August, 1894, in respect of which Probate or Account duty has been paid or is payable, unless the deceased was, at the time of his death, or had been previously, competent to dispose of it.

(*a*) But the duty will not be payable upon the death of the tenant-for-life of settled property, when the tenant-for-life has, more than twelve months before his death, surrendered his life interest in the property to the remainderman to the intent to merge the life estate in the estate in remainder (so held by House of Lords, affirming decision of Court of Appeal in *Attorney-General* v. *Beech*, 67 L. J. R. Q. B. 585; L. R. (1898) 2 Q. B. 147; *Law Journal*, Dec. 10, 1898).

(2) Settled property of every description in respect of which Estate duty has been paid since the date of the settlement, unless the deceased was, at the time of his death, or had been previously, competent to dispose of it.

(3) Property passing for full money consideration.

(4) The property of common seamen, marines, or soldiers dying in her Majesty's service.

(5) Sums of less than £100 which may, under the Friendly Societies Act, 1875; the Savings Bank Act, 1887; and the Acts 26 & 27 Vict. c. 57; 28 & 29 Vict. c. 111; and 31 & 32 Vict. c. 90, be paid to the representatives of the deceased without requiring representation.

(6) Reversionary interests, the Estate duty upon which has been commuted.

(7) Survivorship annuities of less than £25.

(8) Pictures, prints, books, manuscripts, works of art, and scientific collections given or bequeathed for national scientific purposes, or to any university, county council, or municipal corporation, the duty in respect of which has been remitted by the Treasury.

(9) Pensions and annuities payable by the Indian Government to widows or children of deceased officers.

(10) Advowsons or church patronages which would have been free from Succession duty under the Succession Duty Act, 1853, § 24.

(11) Reversionary interests *boná fide* sold or mortgaged before 1st August, 1894.

(12) Property settled by a husband or a wife, or *vice versá*, before 1st August, 1894, and reverting to the settlor.

It being provided by the Act (§ 8) that the existing law relating to any of the duties so leviable on the occurrence of death shall apply for the purposes of collection, recovery, and repayment of Estate duty; it would appear that even absolute gifts, whether of real or personal property, made within twelve months of death, are subject to an Estate duty for which the donees of such gifts will be accountable; and further, that transactions whereby an escape from the duty may be attempted within any period of time before death may be disputed, as regards liability to the duty, on the ground that they are equivalent to gifts made within twelve months of death.

Under the provisions of the Act, the husband or wife of a deceased person, although not now liable to succession duty, may become chargeable with duty on all real estate devised to them. Inasmuch as the estate duty on real property is borne by each of the parts into which such property is divided by

devise, an estate devised to a wife or husband will become newly chargeable with duty under the name of Estate duty (§ 8, 4).

Scales of Rates of Estate Duty.

Subjoined are the scales of the new duty :—

General Estate Duty (s. 17 of Act of 1894).

Where the Principal Value of the Estate					Estate Duty is payable at the rate per cent. of
	£			£	
Exceeds	100	and does not exceed		500	£1
,,	500	,,	,,	1,000	£2
,,	1,000	,,	,,	10,000	£3
,,	10,000	,,	,,	25,000	£4
,,	25,000	,,	,,	50,000	£4 10*s.*
,,	50,000	,,	,,	75,000	£5
,,	75,000	,,	,,	100,000	£5 10*s.*
,,	100,000	,,	,,	150,000	£6
,,	150,000	,,	,,	250,000	£6 10*s.*
,,	250,000	,,	,,	500,000	£7
,,	500,000	,,	,,	1,000,000	£7 10*s.*
,,	1,000,000				£8

Duty on Small Estates (s. 15).

Where the gross value is under £100	nil.
Where the *gross* value (excluding property settled otherwise than by the testator's will)	a fixed duty of
Exceeds £100 and does not exceed £300 . . .	30*s.*
,, £300 ,, ,, 500 . . .	50*s.*

But the executor or successor has the *option* of paying on the *ad valorem* scale (see 44 & 45 Vict. c. 12, § 33, incorporated by § 16).

Where the *net* value of the real and personal property on which estate duty is payable on the death of the deceased (exclusive of property settled otherwise than by his will) does not exceed £1,000, this property is not to be aggregated with the rest of the settled property, and the *principal* value (§ 7 (5)) of the property in question is subject to estate duty, but no legacy, succession or settlement duty is payable (§ 16 (3)).

Estate Duty on Fractions of One Hundred Pounds.

Sect. 17 of the Act of 1896 (59 & 60 Vict. c. 28) provides as follows :

Section 17 of the principal Act shall have effect as if there were added at the end thereof the following proviso in substitution for the existing proviso as to fractional parts of ten pounds : Provided that where the principal value of an estate comprises a fraction of one hundred pounds in excess of one hundred pounds, or of any multiple of one hundred pounds, such fraction shall be excluded from the value of the estate for the purpose of determining both the rate and the amount of duty, except that where the principal value of the estate exceeds one hundred pounds and does not exceed two hundred pounds the duty shall be one pound.

Responsibility of Executors under the Act.

The Act of 1894, it should be observed, imposes a new obligation upon the Executor, who on applying for probate (see *ante*, p. 489,) is to furnish particulars of *all the property* in respect of which Estate duty may be payable. Hitherto an Executor has been required to furnish an account of the personal estate situate in the United Kingdom passing to him by virtue of his office; but in the future he will have to include in his account all the property of the deceased, real or personal, settled or unsettled, whether situate in the United Kingdom or abroad, liable to the duty, to enable the Commissioners to collect the duty from other persons besides the Executor who are liable to pay the same.

The Act also provides (§ 6) that where the Executor does not know the amount or value of any property which has passed on the death, he may state in the Inland Revenue affidavit that such property exists, but he does not know the amount or value thereof, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account, and to pay the duty for which he is or may be liable.

By the same section, interest at the rate of 3 per cent. per annum on the Estate duty shall be paid from the date of the death up to the date of the delivery of the Inland Revenue affidavit or account, or the expiration of six months after the death, whichever first happens; and further, the duty due upon an account of real property may be paid by eight yearly instalments, or sixteen half-yearly instalments, with interest at the rate of 3 per cent. per annum from the date at which the first instalment is due, less income tax; the first instalment being due at the expiration of twelve months from the death

Where other Persons Accountable.

Where property "passes" on the death of the deceased, and the executor is not accountable for the estate duty thereon, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested (not being merely his agent or bailiff), and every person in whom the same is vested in possession by alienation or other derivative title, is accountable for the estate duty on the property. But a *bonâ-fide* purchaser for valuable consideration without notice is not liable to or accountable for duty (§ 8).

Provisions of Act of 1896.

The modifications of the "Principal Act" of 1894 made by the Act of 1896 (59 & 60 Vict. c. 28), and taking effect as from 1st July, 1896, are as follows:—

Where Interest of Settlor Enlarged.

Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose of the principal Act to pass to the settlor on the death of any such other person after the commencement of this Part of this Act, by reason only that the settlor, being then in possession of the property as tenant for life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property (59 & 60 Vict. c. 28, § 14).

Reverter of Property to Disponer.

(1) Where, by a disposition of any property, an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer, and the only benefit the disponer retains in the property is subject to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this Part of this Act, the property shall not be deemed to pass under the principal Act by reason only of its reverter to the disponer in his lifetime.

(2) Where, by a disposition of any property, any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

(3) Provided that the foregoing subsections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been themselves competent to dispose of the said property.

(4) Where the deceased person was entitled by law to the rents and profits of real property (as defined by § 1 of the Succession Duty Act, 1853) of his wife, and has died in her lifetime, such property shall not be deemed for the purpose of the principal Act to pass on his death by reason of her then

becoming entitled to the property in virtue of her former interest (§ 15).

Estate Duty on Annuities.

The estate duty due in respect of any annuity or other definite annual sum, whether terminable or perpetual, referred to in § 2 of the principal Act, may, at the option of the person delivering the account, be paid by four equal yearly instalments, the first of which shall be due at the end of twelve months from the date of the death, and after the end of those twelve months interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly, but the duty for the time being unpaid, with interest to the date of payment, may be paid at any time (§ 16).

Interest upon Estate Duty and other Death Duties.

Simple interest at the rate of three per cent. per annum (without deduction for income tax) is to be payable upon all estate duty from the date of the death of the deceased, or, where the duty is payable by instalments, or becomes due at any date later than six months after the death, from the date at which the first instalment or the duty becomes due; but the Commissioners of Inland Revenue may remit the interest where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account (§ 18).

Incidence of Settlement Estate Duty.

The settlement estate duty leviable in respect of a legacy or other personal property settled by the will of the deceased shall (unless the will contains an express provision to the contrary) be payable out of the settled legacy or property in exoneration of the rest of the deceased's estate (§ 19).

Objects of National, Scientific, or Historic Interest.

Where any property passing on the death of a deceased person consists of such pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income, as appear to the Treasury to be of national, scientific, or historic interest, and is settled so as to be enjoyed in kind in succession by different persons, such property shall not, on the death of such deceased person, be aggregated with other property, but is to form an estate by itself and be exempt from estate duty, but if it is sold or is in the possession of some person competent to dispose of it, it will then become liable to estate duty (§ 20).

A CONCISE DICTIONARY OF LEGAL TERMS.

NOTE.—*In the following pages,* Lat. *stands for* Latin, *and* Fr. *for* Norman-French. *It should be pointed out, also, that some of the words or phrases thus marked are* fragmentary expressions, *that have come into use apart from the complete sentences in which they were originally used.*

A CONCISE DICTIONARY OF LEGAL TERMS.

Abatement.—A term applied in various ways in the sense of making less, or reducing, or the like. Thus, *Abatement* (or reduction) *of a Legacy*, when the assets are insufficient; *Abatement* (or remedying) *of a Nuisance*.

Abeyance.—An estate, or right, or title of dignity, is said to be in abeyance, when the right ownership thereof is uncertain.

Abortion.—In the criminal sense, an unlawful surgical operation, or the unlawful administration of a noxious drug, with intent to procure miscarriage.

Abstract of Title.—A summary of the deeds or other documents of title to an estate or a piece of landed property, usually prepared by the vendor or his solicitor, for the information of the intending purchaser.

Abuttals.—The boundaries of a piece (or parcel) of land, as described in a deed or in particulars of sale, or as shown upon a plan.

Accessory.—An accessory *before the fact* is one who directly or indirectly counsels or assists another to commit any felony. An accessory *after the fact* is one who, knowing a felony to have been committed by another, receives, or assists him, to enable him to escape from punishment; or allows him to escape from custody; or rescues, or attempts to rescue, him from arrest. (But a wife is not deemed an accessory because she receives, comforts, or relieves her husband, knowing him to have committed a felony.) See *Principal*.

Accommodation Bill.—A bill of exchange to which a person puts his name either as drawer, acceptor, or indorser, without receiving any consideration, for the purpose of lending his name to some other person.

Accord and Satisfaction is where an agreement is made between parties, one of whom has a right of action against the other, to the effect that the latter shall do something which the former is to accept in satisfaction of his right of action. Such an agreement, when its terms have been fulfilled, operates as a bar to the right of action.

Act of God.—An inevitable event occurring without the intervention of man—such as flood, tempest, or death—operating in case of certain contracts, such as those of insurers or carriers, to release a contracting party from liability to make good a loss to another party to the contract.

Action.—A proceeding (not being a criminal proceeding) in a court of law in a contentious matter.

Ademption is where a testator, who has by his will bequeathed a particular thing—such as a piece of furniture, or a picture—to a legatee, afterwards parts with it, and so revokes or *adeems* the legacy.

Administrator, Administratrix.—A person appointed by the Court to administer the estate of one who has died without making a will, or who has omitted to nominate executors in his will.

Admittance.—Giving possession to a copyholder of the land held by him from the lord of the manor.

Ad valorem (Lat.).—According to the value. An *Ad valorem stamp* on deeds or documents is one fixed in proportion to the amount of rent reserved or other element of value expressed in the deed.

Advowson.—An advowson is the right of presenting a clergyman to the incumbency of a church, and is said to be *Presentative*, when it is subject to institution by the Bishop of the Diocese; *Donative*, when the presentation was effectual (as was the case before the Benefices Act, 1893) without institution by the Bishop; or *Collative*, when the right of presentation is in the Bishop himself. Donatives are now made presentative: see *ante*, p. 636.

Affidavit.—A statement in writing verified by the oath or solemn affirmation of the person making the statement, made for the purpose of production in evidence at the trial of an action or other legal proceeding.

Affinity.—Relationship by marriage—that is, between the husband, or wife, and the wife's, or husband's, relations by consanguinity.

Affirmant.—A person who makes a solemn declaration in lieu of an oath when giving evidence *viva voce*, or subscribing an affidavit.

Affirmation.—A solemn declaration allowed (by Act of Parliament) to be made in lieu of an oath.

A fortiori (Lat.).—By so much the stronger [reason].

Agistment.—The taking on one's land of the cattle of another person to feed on the land.

Agnates.—Relations by the father's side.

Alias (Lat. = *otherwise*).—Used to connect the supposed names of a person whose real name is not known.

Alibi (Lat. = *elsewhere*).—Term used to describe the ground of defence by a prisoner that he was elsewhere than where the offence took place, at the time when the offence charged against him was committed.

Alien.—A person who is not a British subject.

Alimony.—An allowance made by order of the Court out of a husband's estate for the support of his wife. Alimony may be (i) *Pendente lite*—that is, during the continuance of a pending suit (Lat., *lis pendens*); or (ii) *Permanent*, to be granted on the conclusion of the suit.

Allocatur (Lat. = *It is allowed*).—Certificate of allowance of costs after taxation.

Allodial Tenure.—The holding of land in absolute ownership, without any rent, service, or acknowledgment to a superior: as opposed to the feudal tenures, by which it was superseded in England when the latter were introduced by the Normans.

Amicus Curiæ (Lat. = *A friend of the Court*).—Any person (though generally it is either a barrister or a solicitor who assumes the position) who, being present in Court, but not concerned in the cause, brings to the judge's mind a point of law or a decided case which has not been suggested to the judge.

Ancient Deeds *or* **Documents.**—Deeds or documents of old date which are received in evidence without proof of execution or handwriting, when produced without circumstances of suspicion and from the proper custody—such as counterparts of old leases, entries in family Bibles, and the like writings.

Ancient Demesne.—One of the forms of feudal tenure.

Ancient Lights.—Windows and openings which have had uninterrupted access of light for not less than twenty years, and are therefore to be respected in putting up adjoining buildings.

Animus furandi (Lat. = *Intention of stealing*).—The element of intent to steal, which is necessary to constitute a theft, as distinguished from a lawful taking of goods or an unauthorised taking of them not amounting to theft.

Anticipation.—In conveyancing, any dealing before the proper or specified time with property or income included in a settlement. See *Restraint on Anticipation.*

Appropriation.—The assignment of tithes to a clerical corporation, members of which are qualified to do the work for which tithes were instituted. See *Impropriation.*

Approvement (= *Improvement*) of common lands is where waste lands of a manor are inclosed.

Approver.—See *Queen's Evidence.*

Appurtenances.—Subsidiary rights, such as easements, passing with the grant of land or other hereditaments.

Assessors.—Persons of skill or knowledge in particular matters—such as navigation, manufactures, etc.—who *sit with* a judge to advise him on technicalities which may arise during the trial of a cause.

Assets.—Property available for the payment of debts.

Assizes.—The sitting of Her Majesty's judges out of London under commissions of assize, to hear causes and try prisoners, held when judges go on circuit from one assize town to another.

Assumpsit (Lat. = *He has taken to himself*).—Name formerly given to an action brought for damages for breach of contract.

Assurance (*in Conveyancing*).—A document by which the transfer of property from one person to another is *assured* with proper legal formalities. Used interchangeably with *Conveyance.*

Assurance *and* **Insurance (Life, Fire, &c.).**—See p. 257.

Attachment.—Seizure by a judge's order or other legal process of the person or debts of a person who is in default.

Attainder.—The forfeiture of civil rights formerly resulting from a sentence of death or outlawry. Now abolished.

Attestation Clause.—The sentence in which it is attested by witnesses to a document that the signatures have been witnessed by them.

Attested Copy.—A copy of a document, the verisimilitude of which is verified by a witness.

Attorney.—A person appointed to act in the place of another, from whom, if the appointment is for a purpose requiring special authority, he receives a *Power-of-attorney.* Since the Judicature Act, *Attorneys-at-law* have been styled *Solicitors.*

Attorney-General.—The principal law officer of the Crown and legal adviser of the Government of the day: chosen from the Queen's Counsel, and usually from those sitting in the House of Commons.

Attornment.—The acknowledgment of the right of a landlord, or other superior in title, by a tenant or occupier of lands.

Autrefois acquit, Autrefois convict (Fr. = *Formerly acquitted, Formerly convicted*).—A plea, by a person charged with a criminal offence—to the effect, in the one case, that he has been already tried and acquitted on the same charge; and in the other, that he has already been tried and convicted.

Average.—See under *Insurance,* p. 265, and p. 270.

Award.—The decision given by an arbitrator, to whom a matter in dispute has been referred. An arbitrator states only the effect of his decision, without reasons—thus differing from a judge, who usually states the grounds of his judgment.

Bail.—The security given by one person, under pain of forfeiture of a stated sum of money if the security fail, for the appearance in Court of another person who is charged with an offence.

Bailment, Bailor, Bailee.—*Bailment* is the delivery of goods by one person to another for a temporary purpose; *Bailor* and *Bailee* are the persons by whom, and to whom, respectively, goods are so delivered (see *Bailments*, p. 275).

Baron.—A title enjoyed by judges of the old Court of Exchequer, who were in the first instance peers (or barons), to whom were remitted questions or matters concerning the King's revenue.

Baron and Feme (*or* **Femme**).—Norman-French designation in the older law books for *Husband and Wife*.

Barrator.—A *common barrator* is one who habitually excites or maintains suits or quarrels. *Barratry* among seamen is any unlawful proceeding redounding to the injury of the owner or the freighter of the ship.

Barrister, Barrister-at-law.—A person who, having been "called to the Bar" at one of the Inns of Court (Lincoln's Inn, Inner Temple, Middle Temple, Gray's Inn) is entitled, with other barristers, to the right of audience and advocacy in the superior courts. Barristers practise also in chambers as conveyancing counsel, as draftsmen of pleadings, etc.

Base Fee.—A qualified or conditional estate in lands, conditioned to terminate on the happening of a particular event.

Battery.—An unlawful beating of another person; and thus more than an *assault*, which may be no more than an attempt at *battery*.

Beneficial Interest.—The interest in trust property enjoyed by the person or persons entitled to be benefited by the trust.

Beneficiary.—A person entitled to the benefit of a trust.

Benefit of Clergy.—A privilege originally granted to ecclesiastics, and afterwards to all "clerks," exempting them from trial in the secular courts in criminal cases. Now abolished.

Bequest.—A gift of personal property made by will. See *Devise*.

Bigamy.—The offence of marrying again in the lifetime of one's lawful husband or wife from whom one has not been divorced.

Bill in Chancery.—The proceeding by which a suit in the Court of Chancery was formerly instituted. "Suits" in the Chancery Division are now termed "actions," and are commenced by writ.

Binding-over, Bound-over.—See p. 99.

Blasphemy.—The offence of speaking or writing matter relating to God, Jesus Christ, the Bible, or Book of Common Prayer, intended to wound the feelings of mankind, or to excite contempt and hatred against the Church by law established, or to promote immorality.

Bond.—An acknowledgment in writing, under seal, of an existing debt, or an engagement to pay a stated sum. (Since the Act 32 & 33 Vict. c. 46, abolishing the priority of debts secured by bond, a promissory note is generally preferred as a simpler security.)

Borough.—A town sending a burgess or burgesses to Parliament.

Borough-English.—A custom prevailing in certain boroughs, attaching to lands within the boroughs, whereby the youngest (instead of the eldest) son inherits the lands of his father on the latter dying intestate.

Bottomry Bill *or* **Bond.**—The pledge of a ship, or of her freight or cargo, as security for repayment of money advanced to the captain in an emergency, and of no avail if the ship be lost.

Brawling.—The offence of creating a disturbance in a church or church yard, formerly dealt with in the Ecclesiastical Courts, but since 1860 remitted to magistrates. See p. 640.

Burgage-tenure.—The tenure by which lands in certain ancient boroughs were held of the lord.

Burgess.—A person entitled to vote at elections in boroughs.

By-laws.—Laws or rules laid down by a local or other subordinate authority, under powers given by Parliament, for the guidance of those amenable to the subordinate authority.

Canon Law.—The law embodied in the Canons of the Church.

Capital Crimes are those punishable with death. Besides murder and treason, it is a capital offence wilfully and maliciously to set on fire any of Her Majesty's ships of war, dockyards, or naval or military stores.

Ca. sa. (abbreviation for *Capias ad satisfaciendum*, Lat. = *That you take for the purpose of satisfying*).—A writ issued for the arrest and imprisonment of a debtor.

Casus omissus (Lat. = *Omitted case*).—A point of law not provided for in an enactment on the subject to which it relates.

Caveat (Lat. = *Let him take heed*).—A notice entered on official records by an interested party, by way of warning to others.

Caveat Emptor (Lat. = *Let the purchaser take care*).—A maxim applied in cases of sale or bargain, where the buyer takes no guarantee from the seller as to the latter's right to sell, or as to the quality or suitability of the thing bought. And see p. 94.

Certiorari (Lat. = *To be more fully informed*).—A writ issued when it is desired to bring before a superior Court an order or conviction of magistrates or other inferior tribunal, with a view to its being quashed on the ground of some technical informality.

Cesser.—The coming to an end of a term of years, or of an annuity or other periodical payment.

Cestui que trust (Fr. = *For whom is the trust*).—A beneficiary under a trust, or person for whose benefit the trust is administered; the *cestui que trust* being owner of the *equitable* estate or interest in the trust property, while the *legal* estate or ownership is in the trustee.

Cestui que use (Fr. = *For whom is the use*).—In old conveyancing, the person for whose use an estate was conveyed (as seen in the terms "unto and to the use of," still employed in modern conveyances); the *cestui que use* being now to all intents and purposes the legal owner.

Cestui que vie (Fr. = *For whose life*).—The person during the continuance of whose life an estate is held, whether an estate of freehold or a lease for lives.

Champerty.—A bargain between one of the parties to a suit and some third person, who undertakes to find money to carry on the suit, whereby the land or matter in dispute is to be divided between them in the event of success.

Chance Medley.—The killing of another in one's own defence.

Chancery.—The name formerly applied to the Court over which the Lord High Chancellor presided, now represented by the Chancery Division.

Charitable Uses *or* **Trusts.**—Objects of benevolence which are recognised as proper to be administered under protection of the law. It is not every form of charity, in the popular sense, which is regarded as a charitable trust enforceable at law.

Charter, Royal Charter.—A grant of privileges by the Crown.

Chattels.—*Chattels personal* are goods tangible and appertaining to the person, such as a man may carry or cause to be carried about. *Chattels real* are interests in land not amounting to freehold, such as leases for years.

Choses (Fr. = *Things*).—*Choses in action* are rights of property, such as debts, stocks, shares, and the like, which the owner can enforce by action at law. *Choses in possession* are things which the owner can have in his own enjoyment and possession.

Circuit.—See *Assizes*.

Circumstantial Evidence.—Circumstances from which a supposed fact may reasonably be inferred.

Civil Law.—Another term for *Municipal Law*: more particularly, the codes of law compiled by the Roman jurists.

Close.—An inclosed piece of land.

Codicil.—A document making additions to, or alterations of, the provisions of a will, executed with the same formalities as required for a will.

Cognates.—Relations by the mother's side.

Cognovit (Lat. = *He has acknowledged*).—The admission of one's liability to a claim.

Committee (pronounced with accent on the *third* syllable).—The person to whom the Court *commits* the care of a person of unsound mind, with powers to act in the name and on behalf of the lunatic.

Commodatum (Lat. = [*A thing*] *lent*).—See under *Bailments*, p. 275.

Common, Common Rights.—These latter are rights enjoyed by individuals, in common with other persons, over lands not belonging to them. Hence, *Common* as applied to land over which rights of common are exercised.

Common of Pasture, the right to feed cattle.

Common of Turbary, the right to take peat or turf.

Common of Estovers, the right to take wood for repairs of buildings.

Common of Piscary, the right to fish.

Common Law.—The ancient law of the country, as deduced from custom and interpreted by the judges.

Common Law Courts.—The three Courts of Queen's Bench, Common Pleas, and Exchequer, now merged in the Queen's Bench Division of the High Court of Justice.

Common Pleas.—The name formerly given to one of the three Common Law Courts at Westminster, now merged in the Queen's Bench Division of the High Court of Justice (see pp. 1—3): the name being derived from *Placita communia* (Lat. = *Common pleas*), which, as pleas between subject and subject, were tried before the King's justices; while questions of rights claimed, or of wrongs to be redressed, came before the Court of the King's Bench (in which at first the Sovereign presided), and questions touching revenue came before the Barons of the Exchequer.

Compos mentis (Lat.).—Sound of mind.

Condonation.—See p. 458.

Connivance.—See p. 458.

Consanguinity.—Relationship by blood—either *Lineal* (that is, in a direct line of descent), or *Collateral*.

Consideration.—*Valuable* consideration is where value is given for a property or interest on its changing hands, or where on an agreement being made there are mutual benefits secured to both parties to the agreement. Without consideration, an agreement is not a *Contract* enforceable at law, unless made by deed, a deed always "importing a consideration." *Good* consideration arises from "natural love and affection," as in the case of gifts by a father to a child, or a husband to a wife.

Constructive Trust.—See *Implied Trust*.

Contingent Remainder.—See *Vested Remainder*.

Contra bonos mores (Lat.).—Against good morals.

Contract.—An agreement enforceable at law. See *Consideration*.

Conveyance.—A deed or other document by which property is *conveyed* from one person to another.

Conveyancing Counsel.—Barristers whose practice consists in drafting and settling forms of conveyance.

Coparceners.—See *Heir-at-law*.

Copyholds.—Lands held under the lord of a manor by copy of the rolls of the court of the manor. Distinguished from freeholds by the necessity of admittance of successive tenants (or copyholders) on the court rolls, and of conformity to the customs of the manor. On copyhold lands, timber and minerals generally belong to the lord, and not to the copyholders.

Corporation.—A body (which may consist of a single person, or of a number of persons) established under a corporate name, and possessing certain rights at law in perpetual succession, irrespective of the deaths of individual *Corporators* or members of the corporate body. *A Corporation sole* consists of a single person; a *Corporation aggregate*, of two or more persons.

Counsel.—Now including only Queen's Counsel and Barristers-at-law in England, and Advocates in Scotland; the order of Serjeants-at-law, and the order of Members of the College of Advocates formerly practising in the ecclesiastical courts, having practically ceased to exist.

Count.—See *Indictment*.

Counterpart.—Where a deed, such as a lease, is executed in duplicate, the one part which is signed by the grantor is regarded as the *original*, and the other part as the *counterpart*.

County Courts.—Courts having local jurisdiction only, within their districts in their several counties.

Courts of Appeal.—See pp. 1—3.

Court Baron, Court Leet.—Courts held by the lord of a manor, or his steward, for the admission of tenants of the manor.

Courts Martial.—Courts constituted of naval or military officers, for trial of offences against discipline.

Courts of Summary Jurisdiction.—See pp. 13 and 98.

Cousins-german.—*First cousins*, or children of brothers or sisters; the grandchildren of brothers or sisters being *Second cousins*, and so on: while the child of one's first cousin is a *Cousin once removed;* and the child of one's second cousin, a *Second cousin once removed*, and so on.

Covenant.—An engagement by one party to a deed in favour of another party thereto.

Coverture.—The status of a woman during marriage.

Crim. Con. (*abbreviation for* **Criminal Conversation**).—Adultery. The action for *Crim. con.* against an adulterer, which was formerly open to an injured husband, is now abolished, the right to claim damages against a co-respondent in a divorce suit being substituted.

Criminal Information.—A criminal proceeding in the Queen's Bench in the name of the Attorney-General, on "information" laid before him, this being a form of prosecution of an offender in cases affecting the public interest or welfare in a special degree (see p. 330).

Cross-Examination.—The examination of a witness by or on behalf of the party by whom he has *not* been called.

Cur. adv. vult.—Abbreviation for *Curia advisari vult* (Lat. = *The Court desires to consider*).—A phrase used when judgment is deferred.

Curtesy of England (*or simply*, **Curtesy**).—The custom by which a husband, whose wife is seized of an estate in fee simple or fee tail, has an estate in her lands for his life on her death, if she has had issue by him capable of inheriting.

Curtilage.—A piece of land adjoining a dwelling-house.

Custom.—Unwritten law established by the usage and practice of those concerned. A custom may be either local or of general application.

Cy-près (Fr. = *Near thereto*).—A doctrine of the Courts of Equity, by which effect is to be given *as near as may be* to a testator's intentions: applied more especially in the case of charitable trusts.

Damage feasant (Fr. = *Doing damage*).—A term applied in cases of trespass of cattle upon lands not belonging to their owner.

De bene esse (Lat. = *For sake of convenience*).—A phrase used when in course of an action or other proceeding anything is allowed to be done *beforehand* and *provisionally*—for example, taking beforehand the evidence of an intended witness who is ill and not expected to live.

Debentures.—A form of charge or mortgage security upon the undertaking or property of a joint-stock company, bearing a fixed rate of interest, and either repayable within a fixed term of years or irredeemable during the existence of the company. In the latter case, they may be issued as *Debenture Stock* (see *Stock*).

Decree nisi, Decree absolute.—In divorce proceedings, when a decree is the result of the suit, a decree *nisi* (Lat. = *unless*) is first pronounced, to be made *absolute* if no sufficient cause to the contrary—such as collusion of the parties—be shown within a prescribed time.

De die in diem (Lat.).—From day to day.

Deed.—An instrument, written either on paper or parchment, and duly *signed*, *sealed*, and *delivered*. When the document has been signed and sealed, but not delivered to the grantee, it may be held by another person at the request of the grantor until some condition is fulfilled: it is then termed an *Escrow*, pending delivery.

A *Deed poll* is a deed to which there is only *one party*—who may be either one or more persons, having the same interest in the matter to which the deed relates.

An *Indenture* is a deed to which there are *two or more parties*.

De facto (Lat.).—In fact, or in reality. Used in reference to the actual occupant of an office, as contrasted with the rightful occupant.

Defeasance Clause.—A condition in a deed of grant that on the happening of a specified event the grant shall be inoperative.

De jure (Lat.).—By right. Used in reference to the rightful occupant of an office, as contrasted with the actual occupant.

Demesne.—Land occupied by a feudal lord for his own use.

Demise.—A transfer of a dignity (as used in the expression demise of the Crown); or the grant of a term of years (as used in a lease).

Demurrer.—A form of pleading, now abolished, in which the facts as stated by one's opponent were admitted, but points of law arising thereunder were stated for the decision of the Court.

Denizen.—An alien who has received from the Crown letters-patent of denization: now rarely resorted to—the usual practice being to take out a certificate of naturalisation under the Naturalisation Act.

Deponent.—The person who makes an affidavit; or generally, any person whose evidence, whether by affidavit or *viva voce*, is referred to.

Deposition.—A statement made (by a witness) upon oath.

Depositum (Lat. = [*A thing*] *deposited*).—See under *Bailments*, p. 275.

Derelict.—That which has been abandoned—more especially a disabled or wrecked ship abandoned at sea.

Descent.—The passing of an estate of lands from one person to another by operation of law, in contradistinction to passing by *purchase;* a "purchaser," in the conveyancing sense, being one who takes an estate otherwise than by inheritance, whether he be an actual buyer or acquire the estate by devise or gift. As to the *Rules of Descent*, see p. 423.

De son tort (Fr. = *To his own hurt*).—An *Executor*, or a *Trustee, de son tort* is one who undertakes the duty of such a position without authority, and so acts at his own risk.

Detinue (Fr. = [*A thing*] *detained*).—A term formerly applied to an action for obtaining goods wrongfully detained.

Devise.—A gift of land or interests in land made by will; or popularly, any gifts made by will. See *Bequest.*

Devisee.—A person to whom a devise is made.

Discovert.—A woman not *covert* (see *Femme covert*). A widow; an unmarried woman.

Disseisin.—The unlawful dispossessing of one who has lawful seisin.

Distringas (Lat. = *That you distrain*).—A form of notice entered on the books of stock in the public funds, or the share register of a trading company, restraining dealings with the stock without notice to the person by whom the notice of *distringas* is given.

Divorce.—See p. 456.

Domicile.—The place of one's legal home or permanent residence. Upon the question of domicile, even in the United Kingdom—as whether one's domicile is in Scotland or in England—may depend the question of marriage, or questions of descent of property.

Dominant Tenement.—The land or tenement to which an easement over another (the *servient* tenement) appertains.

Donatio mortis causâ (Lat. = *Gift on account of death*).—A gift which is not to take effect until after the death of the donor or of a third party.

Dower.—The claim of a widow to an estate for her life of one-third of the lands held by her husband in fee simple or fee tail, where no jointure comes to her from her husband. In view of provision by jointure, it is a common practice, on a conveyance of lands, to bar the claim to dower.

Durante bene placito.—See *Quamdiu se bene gesserit.*

Easements.—Rights of light, air, way, water, and support which the owner of lands (the *dominant* tenement) has over or from the lands of another (the *servient* tenement).

Easter Sittings.—The sittings of the Supreme Court of Judicature, beginning in the week next after Easter week, and lasting until the week next before Whitsuntide.

Ejusdem generis (Lat.).—Of the same kind.

Elegit (Lat. = *He has chosen:* the creditor having a choice of this or another remedy).—A writ under which a creditor may acquire possession of the lands of his debtor, to occupy them until satisfaction of his debt from the rents and profits.

Embezzlement.—Appropriation by a clerk or servant of moneys or goods in his hands on his master's account, as distinguished from *larceny*, or theft of money or goods in the hands of the owner. See also p. 75.

Emblements.—Growing crops which may be cut and taken by an outgoing tenant, or the representatives of a deceased tenant, after expiration of the tenancy.

Embracery.—An attempt to corrupt a juror.

Entail.—The limitation of lands to go to a man and the "heirs of his body," as distinguished from "his heirs" simply, as in the case of *Fee simple.* See *Tail.*

Equitable Estate.—See *Cestui que trust.*

Equitable Interests.—Interests in property which had their origin in the application by the Court of Chancery of the doctrines of equity.

Equity.—The system of law which originated in the Court of Chancery, devised in great part to "soften the rigour of the common law." Under the Judicature Acts, the same rules of law are to be administered by both Chancery and Common Law Divisions of the High Court; and where rules of common law and equity conflict, "equity shall prevail."

Equity of Redemption.—The right which the mortgagor has to redeem the mortgaged property on payment of the mortgage moneys and interest, although the mortgagee is in possession. The right is lost if the mortgagee has exercised his power of sale or completed foreclosure.

Equity to a Settlement.—The right which a wife had, previously to the Married Woman's Property Act, to have settled on her a portion of any property coming to her husband in her right after marriage. Under the Act, the property now comes to her as her separate property.

Escheat.—The reversion to the Crown, under rules of feudal tenure, of estates of inheritance for want of an heir, or by reason of forfeiture.

Escrow.—See *Deed.*

Estate Tail.—See *Tail.*

Estates of the Realm.—The Lords Spiritual, the Lords Temporal, and the Commons—forming with the Sovereign the supreme Legislative authority.

Estoppel.—An admission of matters of fact which, in any subsequent legal proceedings, a person is precluded from denying: such as recitals in a deed executed by him.

Examination-in-chief.—The examination or questioning of a witness by or on behalf of the party by whom he has been called.

Exchequer.—The name formerly given to one of the three Common Law Courts at Westminster, now merged in the Queen's Bench Division of the High Court of Justice. (See pp. 1—3.) Originally the Court of Exchequer was the Court in which all questions of the King's revenue were dealt with by the great lords to whom such matters were remitted: hence the title of Baron (instead of Justice) of the Exchequer, by which the Judges of that Court were distinguished.

Executor, Executrix.—The person appointed by will or codicil to carry out the directions of the testator.

Executory Interest.—An interest in property, which is to come into existence at some future time. If under a will, it is an *executory devise;* if under a settlement of lands, a *springing* or *shifting use.*

Ex officio (Lat.).—By virtue of one's office.

Ex post facto (Lat.).—Done after the occurrence, as in the case of legislation having retrospective effect.

Express Trust.—A trust declared in words that show a clear intention to create a trust.

Faculty.—A licence or authority of an ecclesiastical court, required for certain dealings with ecclesiastical property or consecrated ground, or allowing certain privileges to individuals.

Fealty.—The oath of fidelity formerly taken by tenants of feuds to their feudal lord.

Fee-farm Rent.—The rent reserved when an estate was granted in fee—that is, an estate of inheritance—as distinguished from a grant for a term of years or for life.

Fee Simple *or* (*in modern usage*) **Fee.**—A freehold estate of inheritance conveyed to a man "and his heirs," in which case it is in the absolute disposal of the owner both as to the profits, and the disposal thereof in succession to himself: as distinguished from a freehold estate held in estate tail, or for life only, or subject to conditions, such as a fee-farm rent. An estate in fee-simple is what is popularly called "the freehold."

Felo de se (Lat. = *A felon as regards himself*).—One who commits suicide, not being insane.

Felony.—An indictable offence of greater magnitude than a misdemeanor.

Feme (*or* **Femme**) **covert** (Fr.).—A married woman.

Feme (*or* **Femme**) **sole** (Fr.).—A single woman.

Feoffment, Feoffor, Feoffee.—Feoffment being the possession of a freehold estate, its transfer was formerly effected by the ceremony of *livery of seisin*, or delivery of possession (by handing of a twig or the like) by the *feoffor* or owner to the *feoffee*.

Feræ naturæ (Lat. = [*Having the mark of*] *Wild nature*).—Animals and birds *feræ naturæ* are such as are living in a state of nature, as distinguished from *domesticated* animals. They cannot be the subject of property *when alive* unless captured and confined.

Feud.—A grant of land on feudal tenure, in consideration whereof the grantee was bound to render some specified service to the grantor.

Feudal Tenures.—The system of holding of land whereby each tenant, or holder, was bound to render some service, or acknowledgment, or rent, to the feudal lord by whom the land was granted to him; all land being "held" in the first instance by grant from the Sovereign to the great feudal lords as tenants of the King, and by them re-granted (by *sub*-infeudation) to other holders as their tenants.

Feudatory.—The grantee, or holder, of a feud.

Fiat (Lat. = *Let it be done*).—An order or warrant from a superior to an inferior officer.

Fi. fa. (*abbreviation for* **Fieri facias**, Lat. = *That you cause it to be done*).—A writ addressed to the sheriff directing him to take and sell the goods of a debtor in execution for a judgment.

Flagrante delicto (Lat. = *In the very act of committing the crime*).—Referring to the arrest of a criminal.

Flotsam.—See under *Flotsam, Jetsam, and Ligan*, p. 256.

Folk-land.—The public or common land in Saxon communities, as opposed to *Boc-* (or *Book-*) *land* in private ownership.

Foreclosure.—A form of action taken by a mortgagee upon default of the mortgagor to redeem the mortgage, so as to bar the mortgagor's equity of redemption. Foreclosure need not be resorted to where, as is usual in cases of legal mortgage, the mortgagee has a power of sale.

Foreign Attachment.—A procedure, prevailing only in certain local courts, for "attaching," for the benefit of a plaintiff, debts due to a defendant who has failed to appear when sued.

Forgery.—The false making or altering of a written instrument

purporting on the face of it to be good and valid, with the intent to defraud; or the false or unauthorised signing of a document, with intent to defraud. In the case, however, of a forged telegram, it is immaterial whether the "maker" of the telegram had any intent to defraud. See under *Forgery of Telegrams*, p. 70.

Franchise.—In the widest sense, a privilege or liberty; thence a privilege or liberty granted by the Crown, such as rights to tolls, to hold a market, &c.; in popular usage, the right to vote at Parliamentary elections.

Frankalmoign (Fr. = *Free alms*).—The feudal tenure by which religious corporations held the lands granted to them.

Free Bench.—A widow's claim to dower out of copyhold lands of her husband, varying in different manors according to the custom of the respective manors.

Freehold.—An estate in lands held in fee simple, fee tail, or for life (that is, the life of the owner, or the life of some other person). See also *Fee simple*.

Free Warren.—A royal franchise granted to a subject by the Crown for the preservation of beasts and fowl of warren.

Gaol Delivery.—One of the commissions of assize, directing Her Majesty's judges to deliver from gaol all persons detained for trial, and deal with them according to law. See also *Oyer and Terminer*.

Garnishee.—A *Garnishee Order* is made by the Court when a person (the garnishee) from whom a debt is owing to another person is *garnished* or warned not to pay the debt, which is thus "attached" by a creditor of the person to whom the debt is owing.

Gavelkind.—An ancient tenure—retained in Kent when primogeniture was introduced elsewhere in the Kingdom by the Normans—whereby lands descend to all the sons equally, instead of to the eldest son as heir, on the death of the father intestate. Still presumed to prevail in Kent unless the contrary appear.

Goodwill.—The connection or reputation attached to a business as a going concern, and capable of being valued over and above the capital and effects embarked in it.

Grand Jury.—See *Jury*.

Grand Larceny.—Larceny of above the value of 12*d.*, as distinguished from petty larceny. But the distinction is long since abolished.

Grand Serjeanty.—A form of feudal tenure by personal services to be rendered to the Sovereign.

Gross (Fr. = *Entire*).—An incorporeal hereditament, such as an advowson, is said to be held *in gross* when held as a separate property, and not as appurtenant or appendant to an estate.

Ground Rent.—The rent for the land payable under a lease granted for building purposes, and representing the value of the land apart from the buildings upon it.

Habeas corpus (Lat. = *That you have the body*).—The name given to a prerogative writ requiring the production in Court of a person detained in custody. See p. 39.

Habendum.—That portion of a deed conveying land or other property (beginning *to have and to hold*) which defines the nature of the interest, whether a freehold interest or for a term of years, intended to be granted by the deed.

Half-blood.—Children born of the same father, *or* the same mother, only; as distinguished from the *Whole-blood*, born of the same father *and* mother.

Hearsay Evidence.—A statement made in evidence by one person on the authority of another.

Heir-at-law.—The person entitled in law to succeed to an estate of inheritance on the death of the person next before him in the line of inheritance. ("No person can have an heir in his lifetime." But he may have an heir apparent or an heir presumptive).

An *Heir apparent* is he who is certain to succeed to the inheritance if he survive the present owner.

An *Heir presumptive* is he who would succeed to the inheritance should the present owner die immediately, but whose right may at any moment be ousted by the birth of an heir apparent.

Heir expectant is one who may come into the position of an heir presumptive or heir apparent in the event of the death of another person, now standing before him in the line of inheritance.

Customary heirs are where the inheritance is by special custom, as in Borough-English or Gavelkind.

Heirs general are heirs in the usual course of law, according to the rules of descent, as to which see p. 423.

Heirs special are heirs according to the form of settlement, as by tail male, as to which see under *Tail*, p. 701.

Co-heirs or *Co-heiresses*, otherwise *Co-parceners*, are two or more persons who inherit together.

Heirlooms.—Articles which go by custom to the heir, or are bequeathed to go to the heir or devisee, together with lands inherited, and which would otherwise pass to executors as part of the personal estate.

Hereditaments.—Every description of property which on intestacy passes to the heir. *Corporeal* hereditaments are lands and houses capable of actual transfer; *Incorporeal* are interests in land or property, such as easements, reversions, advowsons, tithes, &c., the rights to which are all that are transferred. Hereditaments are also classed as *Real*, *Personal*, and *Mixed*, according as they consist (i) of lands only; or (ii) of interests (such as an annuity secured to a man and his heirs) not connected with lands; or (iii) are of a mixed nature.

Heriot.—A tribute due to the lord of a manor on the death of a tenant of copyhold lands, or any change otherwise occurring in the tenancy of lands holden of the manor.

High Court of Justice.—See pp. 1—3.

High Seas.—The sea beyond three miles from the coast of a country within which distance the territorial jurisdiction of the country extends.

Hilary Sittings.—The sittings of the Supreme Court of Judicature, beginning on January 11th, and lasting until the week before Easter.

Holder for value.—One who holds a bill, or note, or other document representing money, for which he has given valuable consideration. See p. 204.

Holder in due course.—One who holds a bill or other security for money under conditions entitling him to fullest rights and remedies in respect thereof. See p. 204.

Holding over.—The keeping possession by a tenant of the lands occupied by him after the term of letting agreed to by the landlord has expired.

Holograph.—A deed or other writing wholly in the handwriting of the person making and signing it.

Homage.—The meeting in court-baron of the tenants of a manor.

Homicide.—Taking the life of a human being. See pp. 60—62.

Hotchpot.—Bringing into account moneys already received before fixing the amount of the share of a larger fund to which a particular claimant may be entitled. Thus children who have received advances from a father in his lifetime may be required to bring them into hotchpot upon the division of his property after his death.

Hue-and-cry.—The pursuit of a felon by officers of justice, in which all who witnessed it were held bound to participate. The term is now applied as the designation of an official notification of offences which is circulated amongst the police.

Hundred.—A subdivision of a county.

Hundred Court.—Corresponding to a court baron, but comprising the inhabitants of the hundred instead of tenants of a single manor only.

Hypothec.—In Scots law, a security of a creditor over the property of his debtor.

Impeachment.—A charge of "high crimes and misdemeanors" instituted in Parliament, in which the House of Commons, by appointed managers, conduct the prosecution, and the House of Lords act as judges.

Impeachment of Waste is where a holder of land is held responsible for waste or destruction of elements of value of the lands, such as cutting down timber, working and disposing of minerals, allowing the mansion house to go into disrepair, and the like.

Implied *or* **Constructive Trust** is where no trust has been declared in words (see *Express Trust*), but from the facts of the case a trust is implied by construction of law, to satisfy the demands of justice.

Impropriation.—The assignment of tithes to laymen, not qualified to do the work for which tithes were instituted. See *Appropriation*.

In camerâ (Lat. = *In a chamber*).—A case heard, without admission of the public, in a judge's private room, is said to be heard *in camerâ;* this course being taken in cases in which publicity would be detrimental to public morals.

Inclosure.—Freeing lands from rights of common.

Incorporeal Chattels.—Incorporeal rights classed as personal property, such as copyright, patents, &c. They pass on intestacy to the personal representatives.

Incorporeal Hereditaments.—Incorporeal rights of property classed as real property, such as easements, advowsons, &c.

Indenture.—See *Deed*.

Indictment.—An accusation of crime preferred in writing as a preliminary to trial at sessions or the assizes before a judge and jury, as distinguished from a charge which may be disposed of by magistrates. *Counts* are the several parts of an indictment, charging distinct offences.

Indorsement.—Writing on the back of a written document. (As to indorsement of bill of exchange, see p. 207.)

Indorsement of Claim.—The statement of the nature of the plaintiff's claim which is required to be made on a writ of summons.

Infant.—A person under the age of 21 years.

Infanticide.—The killing of a child after birth: as distinguished from *Abortion*, or destruction of the unborn child or *fœtus*.

Inferior Courts.—Local or provincial Courts, as distinguished from the Superior (or Her Majesty's) Courts of law.

In formâ Pauperis (Lat.).—As a pauper.

Information in Chancery.—An old form of proceeding with the consent and in the name of the Attorney-General in certain special causes.

Informer.—A person who sues for a penalty under a statute; a *common informer* being one who is not injured or aggrieved by the act involving the penalty.

Inheritance.—The descent of lands or other property through a man and his heirs.

Injunction.—An order of Court restraining a person from doing something injurious to another's interests, or commanding something to be done for the protection of another's interests. In the former case, the injunction is said to be *Preventive;* in the latter, *Mandatory*. An injunction may either be (i) *Provisional* or *Interlocutory*, or (ii) *Perpetual*.

In loco Parentis (Lat. = *In the place of a Parent*).—A person stands *in loco parentis* when he has voluntarily assumed the position, and he may then be held liable for some of the legal obligations of a parent.

In personam (Lat. = *Against a person*).—An action *in personam* is an action to bind a person, as compared with an action *in rem*, or an action to bind a thing or piece of property.

In re (Lat.).—In the matter of ——.

In rem (Lat. = *Against a thing*).—An action *in rem* is an action to bind a thing or piece of property, as compared with an action *in personam*, to bind a particular person.

Insolvent.—One who has not means wherewith to pay his debts. Formerly there was a distinction in procedure between *insolvency* (in case of a person not in trade), and *bankruptcy* (in case of a person in trade); but the distinction is now abolished.

Insurance *and* **Assurance.**—See p. 257.

Inter alia (Lat.).—Among other things.

Interim Order (*Interim*, Lat. = *In the meantime*).—An order of Court made pending further proceedings.

Interlocutory Proceedings.—Proceedings in course of an action, not involving the final determination of matters at issue.

International Law.—See *Municipal Law*.

Interpleader Summons.—A summons taken out when two or more persons claim property in the hands of the sheriff, or other executive officer, who may require them to *interplead*, that the Court may determine who is the rightful claimant.

Interrogatories.—Formal questions administered by one party in an action to another, for the procuring of evidence before the trial.

Intervener.—A third party, not originally a party to a suit, but having an interest in the matter at issue, and so *intervening* by leave of the Court.

Intestacy, Intestate.—Intestacy is where a person dies without making a will, and he is then said to die intestate, or be an *Intestate*.

In transitu (Lat.).—In course of transit.

Ipso facto (Lat.)—By the [effect of the] act itself.

Jactitation of Marriage.—Falsely giving out one's self as married to another.

Jetsam.—See under *Flotsam*, *Jetsam*, and *Ligan*, p. 256.

Jettison.—Throwing goods overboard to lighten a ship in distress.

Joinder of Action.—Joining in one action two or more causes in which the plaintiff is interested.

Joinder of Issue.—The close of the pleadings in an action, when, all the issues raised therein being stated, the parties can go to trial.

Joint Tenancy is where two or more persons have the same interest in the whole property, without any separate shares, with, accordingly, right of ownership among them, so that on the death of one the whole estate vests in the survivors. Trustees are always joint tenants.

Jointure.—A provision made by a husband for his widow.

Judge-Advocate General.—The principal adviser of the Crown on questions of naval and military law.

Judgment Debtor.—A debtor against whom judgment has been obtained by his creditor, and who has not discharged the debt.

Judicial Committee of the Privy Council.—See p. 12.

Judicial Separation.—See p. 456.

Jurat.—The sentence appended to an affidavit or statutory declaration, showing when, where, and before whom it was made.

Jury, Jurors, Jurymen.—The men sworn to consider and give a true verdict on the evidence produced at a trial or an inquest.

The *Grand Jury* are the body of jurors who at criminal trials determine whether or not a "true bill" (or sufficient case) has been shown on each indictment; and if they find affirmatively, the prisoner goes for trial before the judge and the *Common* (or *Petty*) *Jury*.

A *Special Jury* is composed of men of higher social position than members of a petty jury (see p. 19), and is summoned for such cases as the parties think of special importance.

Jury de medietate linguæ (Lat. = *According to a moiety of speech*).—The jury—composed half of foreigners and half of Englishmen—which previous to 1870 an alien charged with crime was entitled to claim.

Jury of Matrons.—Women impanelled to determine whether or not a female prisoner who pleads pregnancy is in truth in that condition.

Keeping House.—Keeping within doors to avoid one's creditors, amounting to an act of bankruptcy.

Kindred.—Relations by blood or consanguinity, and either (i) *lineal*—that is, in line of descent or ascent, or (ii) *collateral*, of the same stock, but not in line of descent or ascent.

Laches (Fr.).—Negligence in pursuing a legal remedy.

Larceny.—Theft of money or goods in the hands of the owner, as distinguished from embezzlement by a clerk or servant, of money or goods already in his hands on his master's account. See also p. 75.

Law Merchant.—Law as established by the custom of traders.

Lease.—In strictness, any demise or letting of land or houses for any period, however short, though popularly applied to only a letting for more than three years, which must be by deed (see p. 371). An *Underlease* is a letting by one who himself holds the property on lease.

Lease and Release.—A mode of conveyance of landed property by two instruments, now superseded by a single conveyance.

Leasehold.—Land held for a term of years under a lease.

Legacy.—A gift of personal property made by will. If of a particular thing it is *Specific*, and may be adeemed (see *Ademption*); if of a sum of money to come out of the general estate of the testator, it is *General;* if to be paid out of a particular fund, it is *Demonstrative.*

Legal Estate.—See *Cestui que trust.*

Lessor, Lessee.—The persons by whom, and to whom, respectively, a lease is granted.

Letter (*or* Power) of Attorney.—A writing by one person authorising another to do any act in the name of the donor of the power. A power of attorney may be either general or for some special purpose, and either revocable or irrevocable, according to its terms.

Letters of Administration.—The authority granted by the Court to an *Administrator* or *Administratrix* to administer the estate of a person who has died intestate.

Letters Patent.—A grant by the Crown, under the great seal, of an office or privileges, such as patents of inventions. So called from being left open, or *patent*, to all men, instead of being sealed up as a private document.

Levari facias (Lat. = *That you cause to be levied*).—An old form of writ, under which the sheriff collected a judgment debt from rents and profits of land. Now abolished, and superseded by the writ of *Elegit.*

Lien.—A right over the property of another person, either to retain it, if in one's own possession, or to charge it, if not in one's possession, until a claim against the owner of the property shall have been satisfied.

Life Estate *or* Interest.—An estate, or interest, held for the term of one's own life or of the life of another (*pur autre vie*).

Ligan.—See under *Flotsam, Jetsam,* and *Ligan,* p. 256.

Lis pendens (Lat.)—A pending suit.

Livery of Seisin.—The delivery of feudal possession of land with certain formalities.

Locatio et conductio (Lat. = *A placing and hiring*).—See under *Bailments,* p. 275.

Locatio operis faciendi (Lat. = *A placing for doing of work*).—See under *Bailments,* p. 276.

Locum tenens (Lat.).—One holding [another's] place.

Locus in quo (Lat.).—The place in which.

Locus sigilli, *abbreviated* **L.S.** (Lat).—The place of the seal.

Locus standi (Lat.).—Literally, place of standing: the right to appear before a tribunal.

Lord Advocate.—The principal law officer of the Crown in Scotland, holding a similar position to that of the Attorney-General in England and in Ireland.

Lord Paramount.—In feudal terms the Sovereign, as the original holder and grantor of all lands.

Lords Justices.—The Judges of the Court of Appeal.

Maintenance.—An officious intermeddling in an action in which one has no concern, by *maintaining* or assisting either of the parties.

Mala in se (Lat.).—Acts wrong in themselves, apart from their being prohibited by law.

Mala prohibita (Lat.).—Acts prohibited by law, though not necessarily wrong in themselves (*mala in se*).

Malfeasance.—The doing of an unlawful act.

Mandamus (Lat. = *We command*).—A prerogative writ requiring the person to whom it is addressed to do some specified act. See p. 40.

Mandatum (Lat. = [*A thing*] *entrusted*).—See under *Bailments*, p. 276.

Manor.—An estate, the freehold of which is in the *Lord of the Manor*, and whereof portions of the lands are held by the copyholders of the manor. See further under *Copyholds*.

Market Overt (Fr.).—An open market. See p. 94.

Marriage Articles.—An agreement made in view of marriage, and as preliminary to a marriage settlement. See *Settlement*.

Marriage Settlement.—See *Settlement*.

Marshalling Assets.—A doctrine of the Courts of Equity whereby if there are two funds of a testator out of which a particular claim may be met, the assets shall be so marshalled or arranged for payment of claims, that a claimant who can only come on one fund shall not be prejudiced.

Master of the Rolls.—A judge who presides in one of the divisions of the Court of Appeal, in which he sits *ex officio*, and is also Keeper of the Records preserved in the Record Office.

Masters.—Officials of the Supreme Court of Judicature who sit "in chambers" to deal with minor questions of procedure, tax bills of costs, &c. Appeals from their decisions are to a judge in chambers.

Mayhem.—Wounding a person so as to deprive him of an eye or limb.

Memorial of a Deed.—Brief particulars of the deed stated for the purpose of registration.

Mesne Profits.—Rents and profits of land accrued while the estate was in the possession of some one not lawfully entitled.

Messuage (Fr.).—A dwelling-house and curtilage.

Michaelmas Sittings.—The sittings of the Supreme Court of Judicature beginning on October 24th and lasting until December 21st.

Misdemeanor.—An indictable offence not amounting to felony.

Misfeasance.—The doing of a wrongful act, or negligent performance of a lawful act.

Misprision of Treason *or* **Felony.**—Concealment of an act of treason or of a felony.

Modus.—A fixed annual payment, in kind or money, in lieu of the actual tenth of produce or profits payable as tithe.

Monster.—A child born "without shape of mankind." Such offspring are incapable of inheriting lands.

Mortgage.—A conveyance of land or other property as security for the payment of money; the *Mortgagor* (or borrower) being the person by whom, and the *Mortgagee* (or lender) the person to whom, the conveyance is made. See *Redemption*.

Mortmain.—Ownership of land by a corporation or quasi-corporate body, such as trustees of a charity, so that it is inalienable, and is thus said to be *in mortuâ manu* (Lat. = *in a dead hand*).

Municipal Law.—The law of a State: as distinguished from *International law*, or the law concerning the relation of one State to another.

Muniments.—Deeds and papers relating to the title to lands.

Ne exeat regno (Lat. = *Lest he depart from the kingdom*).—A prerogative writ issued to restrain a defendant debtor from leaving the country.

Next Friend.—A relation or other friend in whose name an action is brought or defended by an infant or a lunatic.

Next of Kin.—The kindred of a deceased person who are in the nearest degree of consanguinity, and so entitled to share in the distribution of his property to the exclusion of kindred of a remoter degree.

Nisi prius (Lat. = *Unless previously*).—Trials of actions (not criminal charges) before a judge and jury in London or at the assizes, are trials at *Nisi prius*: the term owing its origin to the provision in *Magna Charta* for the hearing of causes at Westminster, "unless" they had "previously" come before the judges of assize.

Nolle prosequi (Lat. = *To be unwilling to prosecute*).—A formal undertaking on the part of a plaintiff or prosecutor, entered on the record, not to proceed with his action or indictment.

Non est inventus (Lat. = *He has not been found*).—The return to a writ of *Ca. sa.* when the defendant is not to be found.

Non-feasance.—The omission to do an act of obligation.

Non-joinder.—Omission in an action of a person who should have been made a party to the action.

Nonsuit.—The abandonment of his action by the plaintiff at the hearing in Court. If no case be shown the judge may direct a nonsuit.

Not Proven.—A verdict on a criminal charge which is allowed by Scottish but not by English law.

Nudum Pactum (Lat. = *A bare agreement*).—An agreement made without any consideration (see under *Consideration*), and therefore not enforceable in law unless it be made by deed, in which it is immaterial that no consideration appear, as a deed "imports a consideration."

Nullity of Marriage.—See p. 456.

Nuncupative Will.—A will made by word of mouth before two witnesses, and afterwards reduced to writing: allowed in the case of soldiers and sailors of Her Majesty when engaged against an enemy.

Obiter dictum (Lat. = *A thing said by the way*).—An expression of opinion by a judge not relevant to the issue at a trial, and of authority only on its own intrinsic merits, not as a legal decision.

Official Receiver.—The officer appointed to take charge of a debtor's estate on proceedings in bankruptcy being taken against him.

Official Referees.—See p. 3.

Onus probandi (Lat. = *The burden of proving*).—The duty cast on one side or the other at trial of an action to prove the affirmative of the issue raised in the action. It is generally, but not always, on the plaintiff.

Ordinary.—A judge having jurisdiction in his own right, and not as a deputy. In matters ecclesiastical, the Bishop of the diocese.

Originating Summons.—A summons issued in a non-contentious matter, in which trustees, or persons interested in a fund in court, or other applicants, desire to attain the direction or authority of the Court.

Outlawry.—Depriving a man of his legal rights in cases of contumacy

or felony. Now practically abolished, although certain civil disabilities attach to a conviction for felony.

Oyer and Terminer (Fr. = *To hear and determine*).—The designation of one of the commissions of assize, directing Her Majesty's judges to hear and determine matters coming before them at assizes. See also *Gaol delivery*.

Palmer's Act.—An Act of Parliament allowing the trial in the Central Criminal Court (Old Bailey) of a person charged with a crime committed out of the jurisdiction of that Court.

Parol (*or* **Simple) Contract.**—(i) A contract made by word of mouth; or (ii) a contract in writing not under seal.

Parol Evidence.—Evidence by word of mouth; not in writing.

Patent.—A monopoly granted by the Crown by letters patent to the first inventor of an appliance or manufacture.

Patent of Precedence.—A privilege occasionally granted by letters patent to barristers who desire to become leaders in the Courts without becoming Queen's Counsel, in virtue of which they take precedence in Court over junior barristers of older standing than themselves, and next after the Queen's Counsel appointed next before the date of their patents.

Patrimony.—An estate coming to one from his father.

Peculiar.—In ecclesiastical law, a church or district not subject to the jurisdiction of the Bishop of the diocese in which it is situate.

Peine forte et dure (Fr. = *The strong and hard pain*).—The old procedure of putting a person accused of crime to torture, to induce him to confess.

Pendente lite (Lat.).—While a suit is going on.

Peppercorn Rent.—A yearly or other rent of nominal amount, reserved only as an acknowledgment of the right of the landlord to demand a rent.

Per capita (Lat. = literally, *By heads*).—By the number of individuals: as opposed to *per stirpes*, by the number of families. See p. 492.

Perjury.—The offence by a witness at a trial of swearing falsely in a matter material to the issue on which he is giving evidence.

Per my et per tout (Fr. = *By half and by whole*).—The manner in which joint tenants were formerly described as holding an estate.

Personal Property.—Goods and chattels, and interests not amounting to freehold, which pass to a man's personal representatives, and not to his heir, upon his dying intestate.

Per stirpes (Lat. = literally, *By stems*).—By the number of families, as opposed to *per capita*, by the number of individuals. See p. 492.

Petition of Right.—The proceeding whereby a person makes a claim against the Crown.

Petty (*or* **Petit) Jury.**—See *Jury*. ["Petit" (Fr.) was formerly used in a number of legal expressions.]

Petty Larceny.—Formerly the offence of theft to the value of 12*d*., the distinction between petty and grand larceny being now abolished.

Petty Sergeanty.—A form of feudal tenure.

Petty Sessions.—See *Sessions.*

Piracy.—(i) The committing of felonious acts—robbery, assaults, murders—on the high seas. (ii) An infringement of copyright.

Plaint.—A summons issuing out of a County Court.

Pleadings.—The opposing statements which are delivered by the parties to an action until all the issues raised in the action appear. After *Statement of Claim* comes *Statement of Defence;* then *Reply* (in which issue may be joined); then (if necessary) *Rejoinder* and *Surrejoinder;* after which come *Rebutter* and *Surrebutter.* An action may in certain cases be conducted without pleadings (see pp. 5, 6).

Posse Comitatus (Lat. = *The power of the county*).—The able-bodied men, who may be called on by the Sheriff to aid in preserving peace or pursuing felons.

Post mortem Examination.—Examination of a body after death.

Post obit Bond (Lat. *post obitum* = *after death*).—A bond given by an heir-expectant, or any one expecting benefits from another, for repayment of borrowed money at some future time after the death of the person from whom the estate or benefits are to be derived.

Power of Appointment.—Power given (in a will or by deed) by one person to another to *appoint* the persons to whom property shall pass.

Power of Attorney.—See *Letter of Attorney.*

Prerogative.—Power and privilege exercisable only by the Crown, or by the ministers or judges to whom it is committed by the Sovereign. Thus a *Prerogative Writ* is a writ issued in the exercise of the prerogative of the Sovereign by Her Majesty's judges.—See also *Writ.*

Prescription.—The title under which incorporeal hereditaments are claimed by virtue of long use and enjoyment.

Primâ facie (Lat.).—On a first aspect; presumably.

Principal in the First (*or* **in the Second) Degree.**—(i) Whoever actually commits, or takes part in the actual commission of a crime, is a principal in the first degree. (ii) Whoever aids or abets the actual commission of a crime, is a principal in the second degree. (See *Accessory.* The distinction between an *Accessory before the fact* and a *Principal in the second degree* is now of no importance)

Probate.—(i) The proving of a will. (ii) The document evidencing the proof of a will. See p. 489.

Prochain Amy (Fr.).—Next friend. See under that term.

Prosecution.—A proceeding whereby a person is charged with a criminal offence. See *Action.*

Publici juris (Lat. = [*A thing*] *of public right*).—Used to describe interests or rights which are common property.

Puisne (Fr. = *Later born*).—A term applied to a judge of a superior court of lower rank than a chief justice.

Pur autre vie (Fr. = *For the life of another*). Term used to describe an estate or interest in land held by one person for the term of the life of some other person.

Quâ (Lat.).—In the character of.

Qualified Fee.—Another term applied to a *Base Fee.*

Qualified Indorsement.—Indorsement of a bill of exchange with conditions. See p. 205.

Quamdiu se bene gesserit (Lat. = *As long as he may behave well* —that is, *During good behaviour*). — The terms on which many public appointments are held, as distinguished from a freehold in one's office, or an office held *Durante bene placito* (Lat. = During pleasure [of the Crown]).

Quantity of an Estate.—The extent of an interest in lands—whether an estate in fee simple, or for life, &c.

Quantum meruit (Lat.).—As much as he has earned.

Quantum valeat, valebat, valeant, valebant.—As much as it is (or was) worth, or they are (or were) worth.

Quare impedit (Lat. = *Why he obstructs*).—An action to recover a right of presentation to a benefice, presentation to which of the nominee of the claimant has been refused.

Quarter Sessions.—See *Sessions*.

Quash.—To annul or discharge the conviction of a person charged with an offence, or an order made by an inferior tribunal.

Quasi-contract (Lat. *quasi* = *as if*).—An implied contract, arising without express agreement out of the action of the parties.

Quasi-trustee.—One who is placed without intention in a position where he is liable to account to another, as beneficiary or *cestui que trust*.

Queen's Advocate.—The legal adviser of the Crown formerly appointed to act in matters of ecclesiastical, admiralty, or international law, taking rank after the Solicitor-General. Advocates, as a distinct class of lawyer, having ceased to exist with the abolition of the old ecclesiastical and admiralty courts at Doctors' Commons, the office of Queen's Advocate has fallen into abeyance.

Queen's Bench.—The name now given to the common law division of the High Court of Justice, and derived from the name of the former Court of Queen's (or King's) Bench, in which at its first institution the Sovereign sat in person, thus making it the first in dignity, as it was first in authority, of the common law courts. It was presided over by the Lord Chief Justice of England, which title now belongs to the Chief Justice of the Queen's Bench Division.

Queen's Counsel.—Barristers enjoying a superior rank as "leaders" in the courts, taking precedence, in the order of their own appointment, of "stuff gownsmen" or junior barristers, however long the standing of the latter may be. They wear silk gowns in court, and hence amongst lawyers are popularly called "silks," and their promotion to be Queen's Counsel is termed "taking silk." If a Q.C. is retained to defend a prisoner, a licence from the Crown has to be obtained—which, however, is granted as a matter of course on payment of fees.

Queen's Evidence, *or* Approver.—A witness who, though himself implicated in a crime, has been admitted to give evidence against another offender.

Queen's Proctor.—The legal adviser of the Crown whose duty it is to intervene in divorce suits, after a decree *nisi* has been pronounced, and before the decree is made absolute, if he has reason to suspect collusion between the parties to the suit.

Qui tam (Lat. = *Who as well as*).—Used to designate proceedings by a common informer, who sets the law in motion against an offender on his own account, for sake of a reward, *as well as* on account of the Crown.

Quia timet (Lat. = *Because he fears*).—Used to designate a bill in Chancery formerly filed for an injunction to protect property from an anticipated injury. Proceedings with that object are now commenced by an action.

Quit Rent.—Same as *Fee-farm rent*. So called as being an acquittance of services otherwise due.

Quorum (Lat. = *Of whom* [*a certain number*]).—The number required to be present of a body of official persons—such as directors of a company, trustees of a charity, etc.—to constitute a meeting duly authorised to act in the name of the whole body.

Quo Warranto (Lat. = *By what authority*).—A prerogative writ issued against one who claims or usurps any office, franchise, or privilege, requiring him to appear and state by what authority he supports his claim.

Rack Rent.—Rent representing the full value of the property.

Rape.—i. (as a *territorial designation*). Division of a county, in use in certain localities only. ii. (as *designation of a criminal offence*). Having carnal knowledge of a woman by force and against her will.

Ratione tenuræ (Lat.).—By reason of tenure.

Real Action.—An action brought for the recovery of lands or other hereditaments.

Realty, Real Estate, Real Property.—Estates or interests in land (not including terms of years, even for 999 years) amounting to freehold, and passing to the heir on intestacy.

Rebutter.—See *Pleadings*.

Rebutting Evidence.—Evidence brought by one party in an action to disprove evidence produced on the other side.

Receiving Order.—An order made on proceedings in bankruptcy, appointing a receiver to hold and protect the property of the debtor against whom the bankruptcy proceedings are taken; a similar appointment being made in case of a joint-stock company which is to be wound up.

Recognizance.—An obligation imposed on a person in default, in lieu of punishment. See p. 99.

Recorder.—The judge who presides at quarter sessions in boroughs.

Reddendum.—The clause in a lease by which the rent to be paid is reserved ("Yielding and paying, etc.").

Redemption of Mortgage.—Paying off the moneys advanced on security of the mortgage, whereupon the mortgagor (or borrower) is entitled to a re-conveyance of his lands from the mortgagee (the lender).

Reduction into Possession.—Turning a *chose in action* into a *chose in possession*, by obtaining payment of its value in money.

Reference.—The submission of a matter in dispute to an arbitrator for his award.

Refresher.—A fee paid to counsel in addition to the fee marked on his brief, given day by day if the trial last over one day and over five hours.

Rejoinder.—See *Pleadings*.

Relator.—The person on whose *relation* of the case an *Information in Chancery* was brought.

Release.—(i) A writing exonerating a trustee from further liability under a trust, which is given to him by the beneficiary on the trust being fulfilled; as upon the beneficiary coming of age, and being entitled to have the trust property under his own control. (ii) In conveyancing, a form of deed formerly in use (*Lease and Release*) on the conveyance of landed property.

Remainder.—See *Vested Remainder*.

Remanet.—A cause standing for trial, and left over from one sitting of the Court to another.

Remoteness.—Ground of failure of an action for compensation when the injury suffered is too remote from the wrong by which it was occasioned to make the wrong-doer liable in law.

Replevin.—The recovery of goods taken under distraint for rent or execution for a judgment debt by payment of the amount due to the landlord or other creditor.

Reply.—See *Pleadings*.

Requisitions on Title.—The inquiries for further particulars, so as to complete the title to an estate shown by the *Abstract of Title*, which are made by the intending purchaser or his solicitor after receipt of the abstract of title.

Residuary Devisee.—The person who under a will takes all real estate of the testator remaining over and above devises to others.

Residuary Legatee.—The person who under a will takes all personal estate of the testator remaining over and above bequests to other legatees.

Residue.—The portion of a testator's estate remaining after the satisfaction of all claims and legacies.

Res judicata (Lat.).—A matter judicially decided.

Restitution of Conjugal Rights.—See p. 456.

Restraint on Anticipation.—A phrase used to describe a proviso commonly inserted in settlements of property, restraining a married woman from alienating by way of anticipation property or income settled to her separate use, the primary object being to protect the wife from parting with future means of subsistence under undue influence of the husband or others.

Resulting Trust.—A trust that arises by implication of law when the legal estate in property passes from the owner to some other person, without any indication of the owner's intention as to the appropriation of the rents and profits, when it is regarded as held in trust for the owner.

Retainer.—The engagement of the services of a solicitor by a client, or of the services of a counsel by a solicitor on behalf of his client.

Reversion, Reversionary Interest. — An interest in property which at some future time is to *revert* to the original owner after the determination of an estate or interest therein granted by him.

Royalty.—A stipulated sum payable to an owner of minerals, or patentee of an invention, or author of a copyright work, or other person having rights of property, at a fixed rate of so much per ton worked, or so much per article or copy of the work manufactured or sold; the term being derived from the payment to the Crown in former times of dues on the working of minerals, the like dues being still claimed by the Crown on the working of gold and silver mines in the United Kingdom.

Running with the Land.—Term applied to a covenant the benefit or burden of which passes to any person to whom the land thereby affected may be conveyed.

Sacrilege.—The crime of breaking into or out of a consecrated building, with the intent of committing a felony.

Salvage.—(i) Compensation made to the persons by whose exertions property has been saved from loss by fire or shipwreck. (ii) The property itself which is so saved.

Satisfaction.—A term applied to a doctrine of equity, whereby the bequest by a debtor of a legacy of equal amount to an existing debt is held to satisfy the debt of the creditor, or a legacy by a father to a child to satisfy a portion to which the child was entitled. The application of the doctrine may be rebutted by evidence of the contrary intention of the testator.

Satisfied Term is where a term of years has been granted out of lands for a particular purpose, and the purpose having been accomplished the term is at an end.

Scandalum Magnatum (Lat. = *Scandal of Magnates*).—Words uttered in derogation or slander of a peer, or judge, or other high official. Not now a special offence.

Scienter (Lat.).—Knowingly: used especially of one who allows a ferocious animal to be at large.

Scintilla juris (Lat. = *A glimmer of right*).—Formerly applied to a doctrine of possibility of seisin under the Statute of Uses, but now used rhetorically only.

Scire facias (Lat. = *That you may cause to know*).—Term applied to a form of writ requiring a person to show cause concerning the operation of a record in court.

Secus (Lat.).—Otherwise.

Seignory.—The position or relation to his tenants of a feudal lord.

Seisin.—Possession of lands by right of feudal tenure, as distinguished from possession merely as an occupier, *livery of seisin* being the delivery of such possession.

Semble (Fr.).—It seems, or it appears.

Sequestration is where the rent and profits of a property, or an office, are appropriated or sequestered in satisfaction of a legal claim.

Servient Tenement.—The land or tenement over which another (the *dominant* tenement) has an easement.

Sessions.—Sittings of magistrates of a county or smaller district.

Petty Sessions are sittings of one or more magistrates held as occasion may require, but at regular intervals where necessary, to deal with minor offences of which they can dispose without a jury, or to remit offenders for trial at quarter sessions or the assizes.

Quarter Sessions are larger assemblies of magistrates of counties or boroughs to try offences for which a jury is required, and to hear appeals from petty sessions. Licensing of public houses is also a function of magistrates in sessions. In counties there is a standing *Chairman of Quarter Sessions*, who exercises the judicial functions of the assembled magistrates; and in boroughs the *Recorder* is the judge at quarter sessions. Certain offences are triable either at sessions or at the assizes.

Settled Land.—Land in settlement; that is, settled by will or deed to go by way of succession to some person other than the one in possession or occupation under the settlement, the latter being the *limited owner*, and commonly the tenant for life.

Settlement.—A document, such as a deed or a will, defining the way of succession to land or other property, or of enjoyment of the rents and

profits thereof. *Ante-nuptial* and *post-nuptial settlements* are settlements of property in which the husband or wife are interested, made respectively *before* or *after* marriage.

Settlement of Pauper.—A right accruing by birth, or residence, or marriage, to permanent relief out of the poor-rates in a particular parish.

Settlor.—The person by whom a *settlement* of land or other property is made, as by deed, or by will.

Severalty.—The holding by various persons of defined shares in a piece of land or other property.

Sign Manual.—The signature of the Sovereign.

Simony.—The offence of bargaining for the sale of holy orders, or of the presentation to a vacant benefice.

Sinecure.—A benefice without cure of souls, and hence any office without actual duty attached thereto.

Sine die (Lat.).—Without a day [named]; indefinitely.

Sine prole (Lat.).—Without issue.

Sittings.—The sittings of the Supreme Court of Judicature (that is, the Court of Appeal and the High Court of Justice) are divided into Hilary, Easter, Trinity, and Michaelmas sittings, corresponding to the old law "terms," the periods of which were much shorter than those of the sittings. The sittings in other tribunals are arranged independently of any association with the old "terms."

Socage.—Tenure in feudal times of lands by a specified service to the lord, *Common Socage* being equivalent to what is now known as freehold. Special forms of tenure were abolished in Charles II.'s reign.

Solicitor.—A person admitted to practice as legal adviser to persons seeking his services, and as an advocate in Courts where barristers have not the exclusive right of audience.

Solicitor-General.—One of the law officers of the Crown and legal advisers of the Government of the day, ranking after the Attorney-General (in Scotland, after the Lord Advocate): chosen from the Queen's Counsel, and usually from those sitting in the House of Commons.

Special Damage.—A particular loss or injury capable of being stated in exact terms as resulting from the wrongful act of another. Without proof of such damage, plaintiffs in certain actions cannot recover.

Special Jury.—See *Jury*.

Special Pleading.—The art of framing pleadings: so called as having been formerly practised by *Special Pleaders*, or legal practitioners who devoted themselves especially to the work.

Specialty.—A contract in writing under seal—that is, by deed: as distinguished from *Parol Contract*.

Specific Performance.—The remedy sought by a plaintiff who, instead of damages for a breach of contract, seeks the enforcement of the terms of the contract.

Statement of Claim.—The first step in the pleadings to an action, in which the plaintiff particularises his claim, and the legal grounds on which it is based.

Statement of Defence.—See *Pleadings*.

Status.—The position of a person in the eye of the law, in respect of which—*e.g.*, the status of a peer or of a pauper—certain obligations or privileges attach, to be discharged or enjoyed by individuals.

Status quo (Lat. = *The position in which*).—The state of things at a

given date. To place matters *in statu quo* is to place them as they were at some time previously.

Statute of Frauds.—An Act of Parliament of the reign of Charles II.—providing, for the prevention of fraud, that certain contracts should not be enforceable at law unless evidenced by writing.

Statute of Uses.—An Act of Parliament of the reign of Henry VIII., designed to prevent the multiplication of "uses," or secret trusts, by which the rights of feudal lords were commonly defeated.

Statute-barred.—Debts the claim to which is barred by lapse of time under the Statutes of Limitation.

Statutes of Distribution.—The Acts of Parliament directing the mode of distributing the personal effects of a person dying intestate.

Stipendiary Magistrate.—A magistrate in receipt of a stipend.

Stock.—Capital funds (as the Government stocks) which may be held in undefined amounts, as distinguished from shares of defined amount.

Stuff-gownsman.—A junior barrister, as wearing a gown of stuff, and as distinguished from a Queen's Counsel, who wears a gown of silk.

Sub Pœnâ (Lat. = *Under penalty*).—A summons requiring a person to attend to give evidence in court. A *Sub pœnâ ad testificandum* (= *for the giving of testimony*) is a summons to give oral evidence. A *Sub pœnâ duces tecum* (= *that you bring with you*) is a summons to produce documents.

Suit.—The name given before the Judicature Act to an action in the Court of Chancery.

Summons.—Generally, a citation to appear in answer to a complaint or representation made according to law; popularly, the first stage of proceedings in an Inferior Court—for instance, before magistrates or in a County Court (as to which latter, see *Plaint*). A *Summons in chambers*, whether before a Master or a Judge of the High Court, is the course of procedure by which one party to an Action calls upon the other to settle matters of detail in the proceedings incidental to the trial of the Action. See also *Originating Summons* and *Writ*.

Superior Courts.—Courts of the Sovereign as originally settled at Westminster: distinguished from *Inferior* courts having only local jurisdiction, which are subject to control by the Superior courts.

Supreme Court of Judicature.—See pp. 1—3.

Surrebutter, Surrejoinder.—See *Pleadings*.

Surrogate.—An official who acts as deputy of a bishop or ecclesiastical judge, chiefly now in regard to marriage licenses.

Tacking.—The doctrine or rule of courts of equity by which a mortgagee in whom is vested the legal estate, and who makes an advance in addition to his original mortgage without notice of an intermediate advance, may *tack* his second advance to the first and recover both amounts in priority to the intermediate mortgagee. See p. 435.

Tail.—The limitation constituting an *Estate tail*. Where an estate is limited to a person and the heirs of his body *in tail general*, it descends to the heirs of his body whether male or female; or it may be limited *in tail special* to particular heirs of his body, either male or female. Where an estate is limited to a husband and wife and their issue, on the death of either husband or wife without a child born capable of inheriting, the survivor is *Tenant in tail after possibility of issue extinct*.

Tenancy in common is where two or more persons have undivided shares in property, which shares may be equal or unequal, and may be held by them by the same or different titles. On the death of a tenant in common his share goes to his representative, and not (as in joint tenancy) to a surviving co-tenant.

Tenant.—The person who *holds* an estate or interest in land or other property. Popularly, the occupier of a house or lands under a landlord.

Tenant in capite.—A feudal tenant who held his lands direct from the Sovereign.

Tenant Right.—The claim of an outgoing tenant of a farm to compensation for improvements made by him or his predecessors.

Tenement.—The thing *held* by a tenant. Popularly, a house.

Tenendum (Lat. = *To be held*).—The "holding" clause in a deed ("To have and to hold," &c.).

Tenure.—The mode of ownership or occupation of land—as *Freehold*, *Copyhold*, *Leasehold*.

Term of Years.—The period fixed by a lease or otherwise for occupation of land or premises, or the continuance of any legal arrangement.

Terms.—The periods during which the Courts of Law were formerly accustomed to sit, now superseded by *Sittings*. *Michaelmas*, *Hilary*, *Easter*, and *Trinity* terms made up the legal year.

Terrier (Fr.—Lat. *Terrarius liber* = *Book of lands*).—A list or register of lands.

Territorial Waters.—Waters within three miles of the coast of any State, within which, by international law, the municipal law of the State prevails, even as regards foreign ships.

Testament.—A will of *personal* property; or popularly, any will.

Testamentary.—Relating to a will.

Testator, Testatrix.—A man, or woman, who makes a will.

Testatum.—The "witnessing" part of a deed ("Now this indenture witnesseth," etc.).

Testimonium Clause.—The attesting clause (signed by the witnesses) to a will or other document.

Tithes, Tithe Rent-charge.—A charge on lands or other property for the support of the Church. See *Modus*. Originally—

Prædial tithes were those arising "merely and immediately from the ground, as grain of all sorts, hay, wood, fruits, and herbs."

Mixed tithes were those arising "from things immediately nourished by the ground, as colts, calves, lambs, chickens, milk, cheese, eggs."

Personal tithes were tithes of the profits of labour and industry.

Tort.—An injury or wrong suffered by one person at the hands of another, irrespective of any contract between them.

Tort Feasor (Fr.).—One who commits a tort; a trespasser.

Tortious.—Of the nature of a tort; or simply, wrongful.

Transcript.—A copy of any deed or other document.

Traverse.—In pleading, a denial.

Treason *or* **High Treason.**—An offence against the duties of allegiance to the Sovereign. *Petty Treason*, the killing of a master by his servant, has been abolished as a designation of a criminal offence. As to *Treason-felony*, see p. 60.

Treasure Trove (Fr. = *Treasure found*).—Treasure found hidden in the earth, or any private place. See p. 97.

Trespass.—A transgression of the law against either person or property, not amounting to felony.

Trinity Sittings.—The sittings of the Supreme Court of Judicature, beginning in the week next after Whitsuntide, and lasting until August 12th.

Trover (Fr.).—The finding, by some person not the owner, of goods which have been lost.

Trust.—A confidence reposed by one person (the *Settlor* of the trust) in another (the *Trustee*) for the benefit of some person or persons as *Beneficiaries* under the trust. See *Cestui que trust*, and *Settlement*.

Trustee.—A person who undertakes the discharge of a trust.

Ultra vires (Lat. = *Beyond* [*their*] *powers*).—Where a company or other incorporated body go beyond the powers given them by law, the act is said to be *ultra vires*.

Under-lease.—See *Lease*.

Unity of Possession (*or* **of Seisin**), is where lands subject to an easement or charge come into the ownership of the person entitled to the easement or charge, which is thus merged.

Unity of Title is where an estate comes to two or more persons by the same title, as in the case of trustees or others who are joint tenants.

Use.—The right under old law to the beneficial ownership of estates, as distinguished from the seisin or legal possession. Analogous to *Trust* in modern law.

Uses to bar Dower.—A form of conveyance of land (unnecessary since 1834) so as to prevent the right of dower on part of the wife of the purchaser attaching to the land.

Uterine Brother *or* **Sister.**—A brother or sister born of the same mother but by a different father.

Vadium (Lat. = *A pawn* or *pledge*).—See under *Bailments*, p. 276.

Venue (Fr.).—The place of trial.

Verdict.—The finding of a jury. In a civil action, the verdict may either be *General*—that is, for plaintiff or defendant; or *Special*, giving the answers of the jury on questions of fact put to them by the judge, with whom it then rests to state the effect in law of their findings. At a criminal trial, the verdict is either *Guilty* or *Not guilty*.

Versus (abbreviated, **v.**) (Lat.).—Against. Used in the title of an action, as *Brown* (plaintiff) v. *Smith* (defendant).

Vested Remainder *or* **Interest.**—An estate or interest in land or other property which is to be enjoyed after the determination of another and present subsisting estate, and which is ready to come to the person entitled thereto immediately on the determination of the prior estate; being thus distinguishable from a *Contingent Remainder*, which, being dependent on an event which may never happen, may never become vested

Vesting Order.—An order made by the Court in cases of lunacy, or the like, where it is desired to vest in some person the legal title to property, to enable a conveyance or grant thereof to be made.

Vice-Chancellor.—The title given previously in the Judicature Acts to certain Judges of the Court of Chancery. All puisne judges of the High Court of Justice are now styled "Mr. Justice ———."

Vivâ voce (Lat.).—With the living voice; by word of mouth.

Wapentake.—A term of Saxon derivation (still used in some counties) for the *Hundred*, or sub-division of a county.

Ward of Court.—An infant under the care of a guardian appointed by the Court; or who, having no such guardian, has been brought under the protection of the Court by an application on his (or her) behalf.

Warranty.—The same as *Guarantee*.

Warren.—Strictly, and in former times, a place for keeping of beasts or fowl *feræ naturæ*, under prescription or express grant from the Crown; but now applied loosely to tracts of country where beasts and fowl inhabit and breed in a state of nature.

Waste.—Any destruction or wasting of trees, gardens, soil, minerals, or buildings, to the prejudice of the inheritance, such as a tenant for life of landed property may be restrained in allowing, unless he holds the lands *without impeachment of waste*.

Wastes of a Manor.—The lands not occupied either by the lord or by tenants (copyholders) of the manor, but over which rights of common are usually enjoyed by the copyholders according to the custom of the manor. Vacant strips of land by the roadside in modern roads are often the remaining wastes.

Waveson.—Same as *Flotsam*.

Way-leave.—A right of way granted for the carriage of minerals over land adjoining the land on which the minerals are worked, and either aboveground on the surface or underground in the mines.

Whole-blood.—Children born of the same father *and* mother: as distinguished from the *Half-blood*, born of the same father *or* the same mother only.

Will.—The declaration in legal form of a man (or woman's) intentions as to the disposal of his (or her) property after death.

Winding-up of a joint-stock company is analogous to proceedings in bankruptcy in the case of an individual or private firm.

Writ.—The document, issued in the Queen's name, by which action is commenced in the superior Courts of Law, as distinguished from a plaint or summons in a County or other inferior Court.

In an action of the ordinary type, a writ is issued as of right to anyone stating a cause of action, and it is then styled a *Writ of Summons*. Where the Courts are asked to exercise the prerogative of the Sovereign, as in cases of *Habeas Corpus* or *Mandamus*, the granting of the writ (for which special application has to be made) is in the discretion of Her Majesty's Judges, and the writ is then styled a *Prerogative Writ*.

INDEX.

ABATEMENT, 675
Abduction, 69
Abeyance, 675
Abortion, 675
Absconding debtors, arrest of, 33
Absolute title to land, 411
Abstract of title, 675
Abuttals, 675
Accessory, 675
Accidents, insurance against, 271
— with horses, 104, 282
— to workmen, 347
— Notice of Accidents Act (1894), 352
— in factories, 357
— to children engaged in dangerous performances, 360
— from vermin traps, 137
— from negligence, 104
— Lord Campbell's Act, 102
— rights of relatives and survivors of persons killed, 102
— with guns by sportsmen, 104
— by sparks from engines, 104, 106
— from obstructions on highway, 106
— from traction engine, 106
— from carrying dangerous things along streets, 107
— from breaking down of stands at races, 107
— from unprotected shafts, cellars, &c., 107
— contributory negligence, 108
Accommodation bill, 204, 675
Accord and satisfaction, 675
Accountants, allowances to, in bankruptcy, 239
Accounts, falsification of, 71
Accumulations of income, 478
Accusations of crime, 77
Act of God, 675
Actions, 4, 675
— *in formâ pauperis*, 46
Ademption, 675
Administration, letters of, 490, 695
Administrator, administratrix, 495, 675
Admiralty, Court of, 1
Admittance, 679
Adulteration of food or drugs, 515
— of seeds, 522
Ad valorem stamp, 675
Advancements to children, 493
Advertisement, contract by, 543
— of medical treatment, 548
Advowson, 636, 676
— mortgage of, 439
— sale of, 636
— of bankrupt, 234
Affidavit, 676
Affiliation proceedings, 92
— against soldiers, 93
Affinity, 676
Affirmant, 676
Affirmation, 676
Affirming, instead of oath, 45
A fortiori, 676
Agents, contracts by, 170
— betting for principals, 139
— frauds by, 77
— borrowing by, 172
— secret profits made by, 172
— secret purchase of estate by, 409
— gratuitous, responsibilities of, 279
Agistment, 394, 676
Agnates, 676
Agreements (*see* Contracts)
Agricultural gangs, 361
— Holdings Act (1883), 400
— Rates Act (1896), 629
Air, rights as to, 420
Alias, 676
Alibi, 676
Alien, 676
Aliens, holding of property by, 434
— entitled to copyright, 309
Alimony, 463, 676
Allocatur, 676

Allodial tenure, 676
Allotments, 624
Allotments and Cottage Gardens Act (1887), 402
Amicus curiæ, 676
Ancient lights, 419, 676
— deeds, 676
— demesne, 676
Angling, rights as to, 128, 418
Animals *feræ naturæ*, 685
— cannot be distrained, 395
Animals, subjects of larceny, 64
— cruelty to, 71
— ferocious, 103, 138
— painful experiments on, 544
— drugging of, 72
Anticipation, 677
— restraint on, 451, 454, 702
Animus furandi, 676
Apartments, occupiers of, 375
— agreements to let, 381, 382
Apothecaries and their fees, 542
Appeals from High Court, 8
— in criminal cases, 3, 23
— from County Court, 30
— under Divorce Acts, 463
— against rates, 629
Appearance to action, 5
Apprentices, 359
— at sea, 245
— misconduct of, 359
— of chimney sweepers, 361
Apprenticeship, contract of, 359
Appropriation, 677
Approvement, 677
Approver, 677
Appurtenances, 677
Arbitration between employers and workmen, 357
Architects, certificates by, 186
Areas, unprotected, 105
Armorial bearings, licence for, 663
Arrangement, deeds of, 242
Arrest on criminal charges, 56
— resistance to, 58
— and imprisonment for debt, 33
— under coroner's warrant, 52
Arson, 76
— dockyards and ships of war, 60
Art union lotteries, 143
Assaults, 83, 85
— on constables, 58
— proceedings for, 86
— costs of prosecution for, 86
— agreeing to compromise, 65
Assessed taxes, 659
Assessment for rates, 629
Assessors, 3, 677
Assets, 677
Assignment of debts, 217
— of fire policy, 267
— of life policy, 261
Assizes, 13, 677
Assumpsit, 677
Assurance, deed of, 677
— life, 258
Asylums, 549
Attachment, 677
— of debts, 36
— in Mayor's Court, 36
— for misbehaviour, 38
Attainder, 677
Attestation clause, 677
— form of, in wills, 482
Attested copy, 677
Attorney, 677
— power of, 691
Attorney-general, 677
Attornment, 677
Auctioneers, allowances to, in bankruptcy, 239
Auctions and auctioneers, 199, 403
— puffing at horse auctions, 134
— fraud at mock auctions, 201
Authors and publishers, 310
Auto-cars, regulations for, 539, 540
Autrefois acquit, 677
— *convict*, 677
Average in fire insurance, 265
— in marine insurance, 270
Award, 677

BAILEE, 275, 678
Bailiff, certificate required by, 397
Bailiffs, 51, 397
Bail in criminal cases, 96, 677
Bailment, 275, 678
Bailor, 275, 678
Bakers to weigh bread, 300
Bakehouses, regulation of, 521
Bank notes, stolen, 94
Bankers, frauds by, 77
— paying forged drafts, 207
— lending on securities, 151

Banking companies, notes of, 159
— audit of accounts of, 165
Bankruptcy, acts of, 218
— creditor's petition, 219
— debtor's petition, 220
— receiving order, 220
— statement of affairs, 221
— examination of debtor, 221
— schemes of arrangement, 222
— adjudication, 224
— appointment of trustee, 224
— committee of inspection, 225
— creditors may call for accounts, 226
— creditors may require meeting to be held, 226
— trustee to furnish list of creditors, 226
— power to accept composition after bankruptcy, 226
— control over debtor, 227
— re-direction of his letters, 228
— discovery of property, 228
— discharge of bankrupt, 228
— effect of discharge, 231
— restriction on undischarged bankrupt, 231
— where settlement made by debtor, 231
— disqualifications of bankrupt, 231
— proof of debts, 232
— debts carrying interest, 233
— priority of debts, 233
— landlord's distraint, 234
— property available for payment of debts, 234
— when debtor's goods taken in execution, 235
— when settlements void, 235
— realisation of property, 236
— disclaimer of property, 236
— payment of dividends, 237
— allowance to bankrupt, 237
— forfeiture of lease on bankruptcy of lessee, 237
— remuneration of trustee, 238
— accounts of trustee, 238
— allowances to brokers, auctioneers and accountants, 239
— small bankruptcies, 240
— privilege of Parliament, 240
— estate of deceased insolvent debtor, 241
— unclaimed dividends, 241
Bankruptcy—*continued*
— fraudulent debtors, 241
Baptismal fees, 638
Barbed wire fences, 535
Baron, 678
Baron and *feme*, 678
Barrator, 678
Barrister, 678
Base fee, 678
Bastardy, 89
Bastard children, gifts to, 91, 498
— mother's liability, 91
— affiliation proceedings, 92
— registration of birth of, 553
Bathing, indecent, 69
Battery, 83, 678
Bawdy-houses, 89
Beagles, hunting with, 119
Beating bounds of parishes, 610
Beer, debts for, 25, 568
— not to be sold to children, 561
Bells, church, 651
Benefice, repairs of, 657
— sequestration of, 36, 236
Benefices Act (1898), 636
Beneficial interest, 678
Beneficiary, 678
Benefit of clergy, 678
Bequest, 678
Bets and wagers, 138
Betting and Loans (Infants) Act (1892), 140
Betting houses, 143
— in streets, 144
Bicycles, 537
— carriage of, 291
Bigamy, 445, 678
Bilking cabmen, 297
— restaurant keepers, 564
Bill in chancery, 678
Bills of exchange, 202
— definition of, 202
— by directors of company, 164
— given for gaming debts, 142
— stamp on receipts upon, 203
— inland and foreign bills, 203
— discrepancy in, 203
— payable on demand, 203
— indorsed when overdue, 203
— ante-dated or post-dated, 203
— acceptance, 203
— capacity of parties, 204
— by infants or minors, 204
— by corporations, 204
— in name of firm, 204

Bills of exchange—*continued*
— signature by procuration, 204
— consideration for, 204
— holder for value, 204
— lien by holder, 204
— accommodation bill, 204, 679
— holder in due course, 204
— obtained by fraud, 205
— negotiated in breach of faith, 205
— negotiable bills, 205
— how negotiated, 205
— indorsement in blank, 205
— special indorsement, 205
— restrictive indorsement, 205
— overdue bill, negotiation of, 205
— general duties of holder, 205
— presentment for acceptance, 205
— non-acceptance, 205
— presentment for payment, 206
— dishonour, 206
— noting and protest, 206
— acceptor, liabilities of, 206
— drawer, liabilities of, 207
— indorser, liabilities of, 207
— banker paying draft with forged indorsement, 207
— alteration of bill, 208
— acceptance supra protest, 208
— lost bill, indemnity as to, 208
— where bill lost, 202, 209
Bills of lading, 254
Bills of sale, essentials of, 211
— of growing crops, 212
— of fixtures and trade machinery, 212
— where not available to protect chattels, 213
— exemption of securities on imported goods, 213
— registration, 213
— given in false name, 213
— as to seizure of the goods, 214
Birds, maliciously killing, 71
Binding over, 97
Births, registration of, 552
— at sea, 554
— false information as to, 554
Black gown in preaching, 643
Blasphemy, 678
Boat-race, stakes of, 138
Bond, definition of, 678
Bonds to resign by clergymen, 637
— in restraint of trade, 176
— *Post obit*, 470
Bookseller's liability for libel, 334
Borough, 678
— justices, 50
Borough-English, 678
Borrowing goods, 277
— horses and carriages, 281
Bottomry bill or bond, 678
Boughs overhanging road, 533
— overhanging land, 421
Bound over, 97
Boxing-matches, 63
Brawling, 640, 678
Breach of promise of marriage, 446
— by deceased promisor, 447
— by person already married, 447
Bread and flour, sale of, 299
— adulteration of, 300
Bribery at elections of members of parliament, 583
— at municipal elections, 601
— in public bodies, 634
Brick-kiln, when a nuisance, 535
Brokerage and commission, 171, 172
Brokers, allowances to, in bankruptcy, 239
Brothels, 89
Bugs in houses, 375
Builders, contracts by, 186
— deviations and extras, 187
Building societies, 364
Buildings, restrictions as to, 516
Bull-baiting, 72
Bulls, ferocious and dangerous, 105
Buoys, cutting away or removing, 74
Burgage tenure, 678
Burgess, 679
— roll, 600
Burglary, 67
Burial Laws Amendment Act, 555
Burial of the dead, 555
— of bodies cast ashore, 556
— without church service, 555
— by clergyman in unconsecrated ground, 638
— fees for vaults or tombs, 638
— of body of *felo-de-se*, 556
— after cremation, 556
— grounds, disused, building on, 569
Burning of premises, 74
— dockyards and ships of war, 60
Butchers and bad meat, 516
Butter, sham, 522
By-laws, 679

CAB ACT (London), 297
Cabs, advertisements in, 297
Cabmen, bilking, 297
Calendar and lunar month, 181
Campbell's (Lord) Act, 100
Canals, injuring bank of, 70
Cancelling stamps, 179
Canon law, 679
Capital crimes, 679
— effect of conviction for, 97
Carbolic smoke ball case, 545
Cards, public gaming with, 144
— money lent to play at, 141
Carpenters' tools, detaining, 289
Carriage of passengers, 291
— of goods, 291
Carriages, licences for, 664
— and horses, letting of, 281
Carriers, 291
Ca. sa., 679
Casus omissus, 679
Cats, injuries to, from traps, 140
Cattle, dishorning, 71
— killing or maiming, 71
— trespass of, 79
— trespass on railway by, 80
— trespass by diseased, 80
— eating poisonous herbage, 80
— injuries to, by dogs, 138
— do. in charge of bailee, 280
— tethering on highway, 534
— straying on highway, 536
Caveat, 679
Caveat emptor, 92, 679
Cellars, letting or occupying, 516
Central Criminal Court, 12
Ceremonies, illegal, 641
Certiorari, 679
Cesser, 679
Cestui que trust, 679
— *que use*, 679
— *que vie*, 679
Chaff-cutting machines, 109
Challenges to fight, 62
Champerty, 177, 679
Chance-medley, 61, 679
Chancellor, Lord, 1, 2
Chancery Division, 3, 679
Char, close time for, 129
Characters of servants, 79, 342
Charges on land, searches for, 405
Charitable trusts, 630, 679
Charities, gifts to, 630
— recovery of, 632
— parochial, 632
Charities—*continued*
— ecclesiastical, 633
— inquiries concerning, 633
Charter, 679
Charter-party, 252
Chattels, 679
Cheating at games or races, 141
Chemical and acid works, 523
Chemists and druggists, 543
Cheques on a banker, 209
— presentment for payment, 209
— revocation of, 209
— crossed, 209
— "not negotiable," 210
— uncrossed, 210
— specially crossed, 210
— post-dated or ante-dated, 210
— gift of, by dying person, 488
— where lost, 202
— sent "settlement," 201
Child-stealing, 69
Children, custody of, 471
— illegitimate, 89
— crimes by, 469
— dangerous performances by, 360
— in agricultural gangs, 361
— in factories, 356
— — notice of, to be given by medical officer, 513
— in shops, 362
— prevention of cruelty to, 474
— custody of, on separation of parents, 474
— posthumous, 492
— advancements to, 493
— illegitimate, bequests to, 498
— houses for receiving, 551
— intoxicating liquor not to be sold to, 561
Chimney sweepers, 570
— apprentices, 361
Chimneys taking fire, 516
Chloroform, using unlawfully, 73
Choses in action, 680
— — assignment of, 217
— in possession, 680
Church and clergy, 635
Church rates, 650
— bells, 651
— repairs and finance, 651
— property, sale of, 651
— furniture and fittings, 652
Churchwardens, 643
— exemptions from serving, 645

Churchyards, care of, 646
Circuit, 680
Circumstantial evidence, 680
Civil law, 680
— service, money due to deceased persons in, 486
Claim, statement of, 5
Cleansing of Persons Act (1897), 569
Clergy Discipline Act (1892), 640
Clergyman farming or trading, 625
— age for orders, 635
— non-residence, 635
— designation of vicar, 638
— resignation of curacies, 638
— declaration on presentation to living, 637
— resignation bonds, 637
— plurality of livings, 638
— pension to incumbent, 639
— relinquishment of orders, 639
— bankruptcy, 236
— marrying divorced persons, 458
— confession to, 42
Clerk of the Peace, 51
Close, 680
Clubs or friendly societies, 363
Coal Mines Regulation Acts, 569
Coal, sale of, 299
Cockpit, bull-baiting, &c., 72
Codicil, 680
Coffee-house keepers, 564
Cognates, 680
Cognovit, 680
Co-heirs, 687
Coin, counterfeiting, 72
Collative advowson, 676
Collieries, employment in, 569
Colonial property, contracts as to, 178
Combinations of traders, 189
Commercial law, 149
— travellers, 171
— — goods of, at an inn, cannot be distrained, 395
Commission to agents, 172
— to ship brokers, 251
Committee (of a lunatic), 680
Commodatum, 275
Common, rights of, 417, 680
Common-law, 680
Common Pleas, 680
Communion service, lawful and unlawful practices in, 642
Companies, joint stock, 148
— incorporation of, 148
— memorandum of association, 148
— articles of association, 149
— register of members, 149
— registered office, 149
— registration of company, 149
— first general meeting, 150
— special resolutions, 150
— limitation of liability, 150
— prospectuses, 151
— inspection of register, 152
— contracts previous to prospectus, 152
— Directors' Liability Act, 152
— banking company's liability as to its notes, 158
— title to shares, scrip, etc., 155
— share warrants, 155
— forged transfers of stock, 155
— Forged Transfers Acts, 156
— sales and transfer of shares, 157
— do. in banking companies, 157
— liabilities of members, 158
— secret bargains with promoters, 158
— paid-up shares, 158
— winding up, 159
— report by official receiver, 160
— distribution of assets, 161
— preferential payments, 161
— "one man" companies, 162
— rights and liabilities of creditors and shareholders, 162
— frauds upon companies, 163
— private profits by directors and officers, 163
— contracts by and with companies, 163
— negotiable instruments, liabilities of members, 165
— accounts and audit, 165
— infants as shareholders, 467
— infant's liability for shares, 467
Compensation to relatives of persons killed, 100
— for damage by riot, 63, 591
— under Agricultural Holdings Act, 400
— under Cottage Gardens Act, 402
— under Employers' Liability Act (1880), 347
— under Tenants' Compensation Act, 402

Compensation—*continued*
— under Workmen's Compensation Act (1897), 349
Compos mentis, 680
Compositions with creditors, 242
Compromising offences, 65, 75
Concealment and misrepresentation on making a contract, 190
Conciliation Act (1896), 356
Conditions of sale, 430
Condonation of matrimonial offences, 458
Confessions of guilt, 42
Confidential relations, frauds by persons in, 176
Conjugal rights, restitution of, 460
— wife refusing to obey order, 460
Connivance in matrimonial offences, 458
Consanguinity, 680
Consideration, 680
Consistory courts, 12
Constables, 55
— special, 58
Constructive trust, 684
Contempt of court, 38
Contingent remainder, 680
Contra bonos mores, 680
Contract, definition of, 685
Contracts and agreements, 175
— what constitutes a contract, 175
— illegal contracts, 175
— when in writing cannot be varied by parole, 175
— custom as applied to, 175
— fraudulent, 176
— in restraint of trade, 176
— by and with lunatics, 177
— by alien friends and enemies, 177
— relating to foreign or colonial property, 178
— relating to property abroad, 178
— duties on agreements, 179
— unstamped agreement, 180
— time, computation of, 182
— death of parties, 182
— lost or destroyed deeds, 182
— Statute of Frauds, 182
— by letter and post, 182
— goods on sale or return, 184
Contracts—*continued*
— goods destroyed by fire before delivery, 183, 196
— for work and services, 186
— building, 186, 187
— made during intoxication, 187
— made under a threat, 188
— under extreme necessity, 188
— of hiring and service, 335, 360
— by infants, 360, 466
— by and with companies, 163
— by agents, 170
— brokers, travellers, etc., 171
— with heirs expectant, 470
— with unqualified medical man not enforceable, 543
Contributory, liability of, on winding up of company, 163
Conversion of goods, 289
Conveyance, deed of, 681
Conveyancing Acts (1881 and 1882), 430
Conveyancing and Law of Property Act (1892), 237, 431
Conveyancing, new practice in, 430
— authorised costs for, 17
— counsel, 681
Convicts on tickets of leave, 78
Co-parceners, 687
Copyholds, 681
— enfranchisement of, 434
Copyright, law of, 301
— various descriptions of, 302
— in private letters, 302
— duration of, 303
— registration of, 304
— infringement of, 304
— in newspapers, 304
— dramatising a novel, 305
— *Little Lord Fauntleroy* case, 305
— in photographs, 305
— fraudulent production or sale of works of art, 306
— performance of musical compositions, 307
— international copyright, 307
— colonial copyright, 309
— alien author resident within British dominions, 309
— agreements between authors and publishers, 310
— delivery of copies to public libraries, 310
— assignment of copyright, 311

Copyright—*continued*
— none in immoral, blasphemous, or seditious works, 311
— as to advertisements, 311
— Crown and university copyright, 311
— in private letters, 302
— in statistics, 311
— in portion of work, 311
— copying pictures, 312
Corn, distraining, 393
— stealing, 64
— servant disobeying orders as to, 79
Coroners, 52
— election of, 52, 591
Corporation, 681
Corporations, municipal, 598
Corrosive fluid, throwing, 72
Corrupt practices at parliamentary elections, 582
— at municipal elections, 601
— in public bodies, 634
Costs of actions, 7
— of conveyancing, 17
Co-sureties, contributions between, 216
Counsel, 681
Count, 685
Counterclaim, 4
Counterfeiting coin, 74
Counterpart, 681
County councils, 589
— qualification of electors, 589
— women candidates for, 589
— day of election, 590
— powers transferred to, 590
— additional powers, 592
— county rates levied by, 590
— officers appointed by, 590
— control of police, 591, 594
— may oppose bills in parliament, 592
— may make bylaws, 592
— medical officers of health to report to, 592
— financial relations with Exchequer, 593
— contributions to local rates to be made by, 594
— application to boroughs, 594
— new county boroughs, 595
— the metropolis a county, 595
— property and funds, 596
— may acquire lands, 596
County councils—*continued*
— borrowing powers, 596
— accounts, 596
— local financial year, 596
— joint proceedings with magistrates, 596
— duties under Local Government Act (1894), 596
County courts, 24, 681
— personal actions in, 24
— actions of ejectment in, 24, 30
— what actions may be stayed, 24
— powers of High Court, 25
— no action in, for beer, &c., 25
— trust moneys may be paid into, 26
— fees recoverable only by solicitors, 26
— procedure by plaintiffs, 26
— where proceedings to be taken, 26
— hearing of plaint, 27
— actions for debt, 27
— where parties do not appear, 27
— claims before registrar, 28
— trial of actions with jury, 29
— miscellaneous provisions, 29
— summonses to witnesses, 29
— corrupt practices of officers, 30
— appeals, 30
— replevin, 30
— recovery of tenements, 30, 434
— execution of process, 31
— sale after execution, 31
— landlord's claim for rent, 31
— action of title in, 433
Court baron, 681
— leet, 681
Courts of law, 1, 12
— martial, 13, 681
— of summary jurisdiction, 13, 98
— county, 24, 681
— quarter sessions, 703
— petty sessions, 703
Cousins, German, 681
— once removed, 681
— second, 681
Covenant, 681
Covenants running with land, 372
— for title, 430
Coverture, 681
Crab fishing, 131
Credit, misrepresentation as to, 191
— giving, 183
Creditors, compositions with, 242

Cremation, 556
Cribbage, money lent at, 141
Cricket-matches, stakes of, 138
Crim. con., 681
Crimes, compromising, 65, 73
— threatening to accuse of, 75
— by infants, 469
— by lunatics, 98
Criminal appeal, court of, 3
— information, 681
Criminal Evidence Act (1898), 42
Criminal law, 59
— cases, procedure in, 98
— do., new trials in, 23
— lunatics, 100
— felony and misdemeanor, 59
— treason, 59, 702
— traitors, punishment of, 60
— treason-felony, 60
— murder or homicide, 60
— justifiable homicide, 61
— excusable homicide, 61
— chance-medley, 61
— felonious homicide, 62
— *felo-de-se*, 62, 685
— manslaughter, 62
— duels and challenges, 62
— prize-fighting, 63
— riots and rioters, 63
— larceny, 64
— stealing corn, grass, etc., 64
— dog-stealing, 64
— shooting or killing pigeons, 65
— stealing ferrets, foxes, etc., 65
— searching servant's boxes, 65
— compromising a felony, 65
— compromising assaults, 65
— compromising misdemeanors, 65
— offences as to documents, 66
— altering wills, 66
— stealing or destroying post letter, 66
— uttering false petitions, 67
— personating seamen, 67
— disclosure of official documents or information, 67
— stealing metal, 67
— burglary and housebreaking, 67
— receiving stolen goods, 68
— receiving old metals, marine stores, etc., 68
— sacrilege, 68
— man-traps and spring-guns, 69
Criminal law—*continued*
— abduction, 69
— stealing children or their clothes, 69
— obscenity and lewdness, 69
— indecent exposure in bathing, 69
— rape, 69
— injuring sea banks, rivers, canals, ponds, etc., 70
— forgery, 70
— forging registers of births, deaths, or marriages, 70
— forgery of telegrams, 70
— divulging telegrams, 70
— forging stamps used in courts of justice, 71
— falsification of accounts, etc., 71
— ill-treatment of animals, 71
— dishorning cattle, 71
— killing or maiming cattle, 71
— killing or maiming dogs, birds, etc., 71
— cock-pit, bull-baiting, 72
— drugging of animals, 72
— vagrancy, 72
— idle and disorderly persons, 72
— rogues and vagabonds, 72
— incorrigible rogues, 73
— paupers leaving casual wards, 73
— using chloroform with criminal intent, 73
— administering poison, 73
— malicious injuries, 74
— counterfeiting or defacing coin, 74
— making or selling medals resembling coin, 74
— placing gunpowder near buildings, 74
— using explosive substances, 74
— destroying hop-binds, 74
— destroying machines, 75
— obstructing railways, 75
— embezzlement, 75
— distinction between larceny and embezzlement, 75
— compounding a felony, 75
— do. a misdemeanor, 75
— taking reward for restoring stolen property, 75
— exhibiting false lights, 76
— removing buoys, 76
— destroying wrecks, 76

Criminal law—*continued*
— obtaining goods by false pretences, 76
— personation, 67, 76
— arson, 76
— sending threatening letters, 76
— sending objectionable matter by post, 77
— threats and accusations, 77
— demanding money with threat, 77
— robbery, garotting, etc., 77
— stealing or injuring shrubs, trees, etc., 77
— frauds by bankers, agents, etc., 77
— smuggling, 78
— injuring property of volunteers, 78
— convicts at large on licence, 78
— receiving or selling public stores, 78
— extortion by public officers, 78
— malicious neglect in municipal works, 79
— false "characters," 79
— disobedience of master's orders as to corn, 79
— assaults and affrays, 85
— proceedings for assault, 86
— assaults on police, 84
— prosecution of offenders, 98
— punishment of offenders, 99
— do. of first offenders, 66
— committal to industrial or reformatory schools, 99
— criminal lunatics, 100
— obtaining meals on false pretences, 564
Criminal Law Amendment Act (1885), 87
Crops, distraint of, for rent, 393
Cross-examination, 681
Crowds, collecting, 529
Crown, tenure of service under, 337
Cruelty to animals, 71
— to children, 474
Cur. adv. vult, 681
Curacy, resignation of, 637
Curtesy of England, 681
Curtilage, 682
Custody of Children Act (1891), 474
Custom, 682
— immemorial, 418
— as applied to contracts, 175
— as to outgoing tenants, 383
Custom—*continued*
— to take or use water, 419
— to wash and water cattle, 418
— as to village greens, 418
— to fish and angle, 418
Cy-près, 682

DAMAGE FEASANT, 79, 682
Dangerous goods, sending by railway or carrier, 296
— sending by post, 75
— depositing, 296
Dangerous performances by children, 360
— Act of 1879 and 1897, 360
Death duties, 665
Death, registration of, 553
— certificate of, required before burial, 555
— crimes punishable with, 679
De bene esse, 682
Debentures, 682
Debt, letter from solicitor demanding payment of, 15
— time within which action must be brought for, 9
— old, how revived, 9
— action for, in county court, 27
— imprisonment for, 33
— attachment of, 36
— acknowledgment by I O U, 211
— tender in payment of, 200
— assignment of, 217
— payment of testators', 496
— for beer and spirits, 568
Debtor, fraudulent, 241
— arrest and imprisonment of, 33
— absconding, 33
— and sureties, 216
— estate of deceased, 241
Deceased wife's sister, marriage with, 443
— in Jersey, 443
Deceit, fraudulent, 190
Deck lines, 246
Decree, absolute, 682
— *nisi*, 682
De die in diem, 682
Deed, 175, 682
— when to be stamped, 179
— detention of by solicitor, 16

Deed—*continued*
— lost, relief in equity as to, 182
— action to recover, 182
— not to be prepared by unqualified persons, 180
— registry of, 411
— mortgage by deposit of, 439
Deeds of Arrangement Acts (1887 and 1890), 242
Deer killing or stealing, 122
Defacing coin, 74
De facto, 682
Defamation, 321
Defeasance clause, 682
Defilement of streams, 416
Degrees, prohibited, in marriage, 443
De jure, 682
Delivery of goods, 196
Demesne, 682
Demise, 682
Demurrage, 252
Demurrer, 682
Denizen, 682
Dentists, 542
Deponent, 682
Deposition, 682
— of dying person, 43
Depositum, 275
Deputy-lieutenants, 51
Derelict, 682
Descent, 683
— as to personal estate, 491
— as to real estate, 423
Designs, registration of, 315
De son tort, 683
Detention of goods, 289, 295
— of money, 200
— of woman for immoral purposes, 87
Detinue, 683
Devise, 683
Dilapidations, ecclesiastical, 657
Directors, frauds by, 163
— profits made by, 163
Directors' Liability Act (1890), 152
Disclosing official secrets, 67
Discovert, 683
Diseased sheep on common, 417
— cattle, trespass by, 80
Dishorning cattle, 71
Disseisin, 683
Distress for rent, 390
— for poor's rate, 629
— amending Act of 1895, 397
Distribution of personal estate of intestate, 491
District councils, 604
— registries, 5
Distringas, 683
Ditches and hedges, 421
Divorce, 456
— remedies in, 456
— proceedings to obtain, 456
— suit *in formâ pauperis*, 47
— insanity of husband or wife, 458
— as to marrying again, 458
— condonation, 458
— connivance and collusion, 458
— judicial separation, 456, 459
— nullity of marriage, 456, 459
— restitution of conjugal rights, 456, 460
— non-compliance with decree, 461
— settlements of property, 461
— costs in divorce suits, 462
— decree *nisi*, 462
— appeals, 463
— periodical payments in lieu of attachment, 463
— alimony, 463
Dockyards, firing, 60
Documentary evidence, 44
Documents, unstamped, as evidence, 44, 180
Dogs, licences to keep, 134
— stealing, 64
— killing or maiming, 71
— trespass by, 83
— gamekeeper's powers as to seizing dogs, 120
— keeping ferocious dogs, 135
— shooting ferocious dogs, 136
— dangerous, on highways, 136
— reputed to be mad, 137
— muzzling, 137
— injuries to, from traps, 137
Domicile, 683
— of testator, 480
— do. dying abroad, 480
Dominant tenement, 683
Donationes mortis causâ, 488, 683
Donative advowson, 637, 676
Doors opening on road, 536
Dower, 455, 683
— uses to bar, 707
Drainage (*see* Public Health)
Drains, nuisances from, 519, 527

Driving, reckless, 535
Drugs, adulteration of, 515
— administering maliciously, 72
Druggists, 545
Drunkards, retreats for, 550
Drunkenness, 562
Drunken person, contract by, 187
Duels, 62
Durante bene placito, 696
Dwelling-house, agreement for lease of, 382
— trespass in, 78
— as to breaking doors of, to distrain for rent, 396
Dying persons, declarations by, 43
— gifts by, 488, 683

EASEMENTS, 413, 683
Easter sittings, 683
— term, 706
Ecclesiastical charities, 633
— courts, 12
— dilapidations, 657
— livings, exchange of, 637
— property, 655
Ejusdem generis, 683
Elections, municipal, 598, 601
— corrupt practices at, 601
— illegal practices at, 602
— committee rooms at, 603
— meetings at, 603
Elections, parliamentary, 573
— qualification in counties, 574
— notice of claim to vote, 576
— service franchise, 576, 578
— qualification in boroughs, 577
— lodger's qualification, 578
— mortgagee's right to vote, 579
— temporary abeyance of qualification, 579
— claims to vote, 579
— objection to voters, 581
— where qualifying property not rated, 582
— disqualifications, 581, 582
— voting at, 582
— corrupt practices, 583
— illegal practices, 584
— where candidate personally guilty, 583, 585
— personation, 584, 585
Elections—*continued*
— no committee rooms at hotels, 582, 585
— penalties for corrupt practices, 583
— do. for illegal practices, 584
— do. for false statement as to candidates (Act of 1895), 584
— do. for illegal payments, 585
— bribery defined, 583
— undue influence defined, 584
— candidate guilty by agency, 585
— election expenses, 585
— election agents, 585, 586
Electors, registration of, 587
— parliamentary register, 587
— local government register, 588
— parochial register, 588
Elegit, 32, 683
Elementary Education Acts, 606
Elephant, risk of keeping, 103
Embezzlement, 75, 683
— and larceny, 75
Emblements, 683
Embracery, 22, 684
Employers' Liability Act, 347
Employers and workmen, 347
— liability for accidents, 347
— Act of 1880, 347
— Act of 1897, 349
— Notice of Accidents Act (1894), 352
— persuading workmen to leave their employers, 352
— payment of wages in goods illegal, 353
— disputes between employers and workmen, 355*d*
— arbitration between do., 356
Engines, destroying, 73
Enlistment, illegal foreign, 111
Entail, 684
Entailed estate, 424
Equitable interests, 684
— estate, 684
Equity, 684
— of redemption, 684
— to a settlement, 684
Escheat, 684
Escrow, 684
Estate, personal, descent of, 491
— real, descent of, 423
— tail, 424, 684
Estates of the realm, 684

Estoppel, 684
— in case of married woman, 455
Evidence, rules of, 41
— before coroners, 52
— hearsay, 41
— of husband and wife, 41
— of persons charged with crime, 41
— Act of 1898, 42
— confessions, 43
— dying statements, 44
— oaths and affirmations of, 45
— in bastardy proceedings, 90
— in breach of promise, 446
— circumstantial, 680
Examination-in-chief, 684
Exchange, bills of, 202
Exchequer, Court of, 684
Excise licences, 659
Execution, 34
Executor, executrix, 684
Executors and administrators, 494
— may distrain for rent, 388
— right to money secured by mortgage, 437
— liabilities on contracts, 494
— infant executor, 495
— payment of debts, 496
— allowances to, 502
— responsibility of, as to death duties, 670
Executory interest, 684
— limitations, restrictions on, 425
Ex officio, 684
Expeditions, illegal foreign, 111
Explosion, maliciously causing, 74
Explosives, 530
— sending by post, 77
Ex post facto, 684
Express trust, 684
Extortion of money, 78, 200, 329

FACTORIES, accidents in, 357
Factory and Workshop Acts, 356
Faculty, 684
Fairs, 570
False characters, 79, 343
— lights, exhibiting to ships, 76
— pretences, 76
— imprisonment, 84
Farrier bound to shoe horse, 134
— liable for laming horse, 134
— lien of, on horse, 280
Fealty, 685
Feeding-stuffs, warranty of, 521
Fee-farm rent, 685
Fee-simple, 428, 685
Felo-de-se, 62, 685
— burial of body of, 556
Felony, definition of, 59, 685
— compounding, 75
— forfeiture on, 99
Femme covert, 685
— *sole*, 449, 685
Fences, ownership of, 421
Fencing of shafts, &c., 105
Feoffee, 685
Feoffor, 685
Feoffment, 685
Feræ naturæ, 685
Ferocious animals, 105
Ferrets, stealing, 65
Fertiliser and Feeding Stuffs Act (1893), 521
Feud, 685
Feudal tenures, 685
Feudatory, 685
Fiat, 685
Fidelity insurance, 273
Fieri facias, 34, 685
— — *de bonis ecclesiasticis*, 35
Fighting duels, 62
Finance Acts, 665
— death duties before 1894, 665
— do. under the Acts, 665, 666
— alterations made by, 666
— scale of estate duty, 669
— property liable to do., 667
— responsibility of executors, 670
— other persons accountable, 670
— amendments made by Act of 1896, 671
Finder of lost property, 95
Fire, premises destroyed by, 372
— insurance, 264
— tenant's liability as to rent, 372
— chimney on, 516
— false alarms of, 516
Fireworks, letting off, 530
First offenders, probation of, 66
Fisheries and fishing, 128
Fixtures, tenant's right as to, 384
— removable by tenant, 384, 385
— ornamental and trade, 384, 385
— as to distraining, 392

Flagrante delicto, 685
Flesh, poisoned, 522
Flotsam, jetsam, and ligan, 256
Flour, unwholesome, 516
Folkland, 685
Food, adulteration of, 515
— unwholesome, selling, 516
Footways, cleansing of, in London, 513
Foreclosure, 685
Foreign attachment, 36, 685
— country, contracts relating to property in, 108
— expeditions, 111
Foreign Marriage Act (1892), 109
Forfeiture for felony, 97
Forged bills, banker paying, 207
Forged Transfers Acts, 156
Forgery, 70, 685
— of telegrams, 70
— of trade mark, 319
Fox-hunters, 113
Foxes, stealing, 65
Franchise, 686
Frankalmoign, 686
Frauds, Statute of, 182, 403
Fraudulent debtors, 241
— misrepresentation, 190, 406
Free bench, 455, 686
Freehold, 690
Free warren, 686
Free education, 607
Freight, 253
Friendly societies, 363
Fruit trees, overhanging, 421, 533
Furious riding or driving, 535
Furnished houses and lodgings, 375
— house, agreement for, 380
— lodgings, agreement for, 382
— distress on tenant of, 390
— occupier's right to franchise, 578
Furniture, hire and purchase of, 184
Furniture depositories, 280
— removers, 296

GAME LAWS, 113
— game, definition of, 113
— riding or shooting upon or over another's land, 113
Game laws—*continued*
— fox-hunters and others, 113
— notice to trespassers, 114
— trespass after notice, 114
— property in game, 114
— trespass in search of game, 114
— penalties for killing game, 116
— do. without certificate, 116
— laying poison, 116
— taking eggs, 116
— killing game on Sunday, 116
— — out of season, 116
— — hares out of season, 117
— selling game without licence, 117
— licensed dealers in game, 117
— tenants killing game, 118
— tenant's right to kill hares and rabbits, 118
— hire of rights of shooting, 119
— coursing and killing hares, 119
— owner or occupier's right to kill hares, 119
— hares or coneys in warrens, 120
— gamekeepers, 120
— seizing guns and dogs, 120
— authority for seizing game, 121
— suspected poachers may be searched by constables, 121
— night poaching, 122
— deer stealing, 122
— game licences, 122, 123
— wild fowl, decoys, etc., 124
— woodcocks, snipes, etc., 124
— trespassers in pursuit of snipes, etc., 125
— wild birds, protection of, 125
— swans, property in, 127
— swan-stealing, 127
Gamekeepers, 120
— assaults on, by poachers, 122
Games, playing on highways, 534
Gaming Act, 138
Gaming, betting, etc., 138
— in street or highway, 165
— betting houses, 143
Gaming debts, 138
Gambling in the funds, 146
Gaol delivery, 686
Garnishee, 36, 686
Garotting, 77
Gas explosions, 531
— works, malicious neglect in, 77

Gates opening on road, 536
Gavelkind, 686
Gifts by dying persons, 488
Girl, detention of, for immoral purposes, 87
Girls in agricultural gangs, 361
— in workshops, 356
Glandered horse, 134
Gleaners and gleaning, 422
Glebe lands, sale of, 658
Gonorrhœa, advertisement relating to, 549
Goods, sale of, 192
— stolen, purchase of, in market overt, 94
— unlawfully detained, 289
— wrongful conversion of, 289
— seller's lien, 198
— stoppage *in transitu*, 183, 198
— warranty of, 189, 193
— misrepresentation as to quantity or quality, 190
— lost or injured by negligence, 279
— lien on, for labour, &c., 280
Goodwill, 686
— sale of, 188
Governesses, engaging, 339
Grain, poisoned, 522
Grand jury, 686
— larceny, 686
— serjeanty, 686
Grass, stealing, 64
Greenhouses erected by tenant, 385
Gross, 690
Ground game, 118
— rent, 686
Growing crops, distraint on, 393
— bill of sale for, 212
Guarantees, 214
Guardian and ward, 471
Guardianship of Infants Act (1886), 473
Guardians and district councils, 604
— boards of, 604
— qualifications for, 604
— electors of, 604
— terms of office, 604
Gun accidents, 104
— licences, 123
Gunpowder, sale of, 530
— placing near buildings, 74
Guns, letting off, 534

HABEAS CORPUS, 39, 686
Habendum, 686
Habitual drunkards, 550
Hackney carriage drivers, 517
Half-blood, 687
Harbouring married woman, 453
Hares, 117
— coursing and killing, 119
— owners or occupiers' right to kill, 119
— in warrens, 119
Hawkers, 571
Hearsay evidence, 41, 687
Hedges, pruning of, 534
Hedges and ditches, 421
Heir-at-law, 423, 687
— apparent, 423, 687
— co-heirs, 687
— customary, 687
— expectant, 687
— general, 687
— special, 687
— presumptive, 423, 687
— personation of, 76
Heirlooms, 488, 687
Heirs expectant, dealing with, 470
Hereditaments, 687
Heriot, 687
High Court of Justice, 1
— procedure in, 3
High seas, 687
Highways, 532
— accidents on, 104, 106, 107
— betting on, 144
— dedication of, to the public, 532
— repair of new, 532
— improvement of private streets, 532
— impassable or dangerous, 533
— stopping up or diverting, 533
— trees and hedges on, 533, 534
— width of highways, 534
— encroachments on, 534
— nuisances and offences on, 534
— barbed-wire fences, 535
— furious riding or driving, 535
— stray cattle on, 536
— doors and gates on, 536
— rule of the road, 536
— extraordinary traffic over, 536
— vehicle on wrong side, 536
— locomotives on, 538
Hilary sittings, 687
— term, 706
Hire-and-purchase system, 184

Hiring and letting carriages, 281
— — horses, 281
— — houses and land, 367
Holder of bill, 204, 687
— for value, 204, 687
— in due course, 204, 687
Holding over, 687
Holograph, 688
Holy orders, age for, 635
— relinquishment of, 639
Homage, 688
Homicide, 60
Hop-binds, destroying, 74
Hop-pickers, bylaws for, 570
Horse-dealing, 132, 133
Horseflesh, sale of, 523
Horse-races, stakes of, 138
— in Metropolitan district, 141
Horses, 131
— at livery, 281
— stolen, purchase of, 93
— negligent management of, 103
— soundness, 131
— unsoundness, 131
— glandered, 131
— vices in, 132
— warranty of, 132, 133
— conditional purchase of, 132
— letting and hiring, 281
— farrier laming, 134
— at an inn, 567
— trainer of, his lien for keep, 280
— furious riding or driving, 535
Hotchpot, 688
House, damage in pulling down, 79
— and estate agents, 173
— duty, 662
— refuse, removal of, 519
Housebreaking, 67
Houses and lands, 367
Housing of the Working Classes Act (1890), 511
Hue-and-cry, 688
Hundred, 688
— court, 688
Husband, wife, and children, 441
— seduction of wife, 89
— distress by husband in respect of wife's property, 388
— property of married women, 449
— loans by wife to husband, 449
— legal proceedings as between husband and wife, 450
— rights of action by and against married women, 450
Husband, wife, and children—*continued*
— married woman trading may be made bankrupt, 450
— wife's ante-nuptial debts, 451
— summary proceedings in questions of property, 451
— married woman as executrix or trustee, 451
— life assurance by married men and women, 454
— wife's liability as to maintenance of husband, 451
— do. as to children, 452
— wife's paraphernalia, 452
— wife's debts, husband's liability as to, 452
— deeds of separation, 453
— harbouring a married woman, 453
— debts of reputed wife, 454
— married woman tenant for life, 454
— restraint on anticipation, 451, 454, 702
— dower, 455
— free bench, 455
— wife's summary remedies, 464
— see also under "Divorce"
Hypothec, 688

IDIOTS, care of, 550
Idle and disorderly persons, 72
Illegal expeditions, 112
Illegitimate children, bequests to, 498
— liability of parents for, 91
Immorality, imputations of, 323
Impeachment, 688
— of waste, 688
Implied trust, 688
Imprisonment, false, 84
Impropriation, 688
In camerâ, 688
Inclosure, 688
Income tax, 659
— deduction of, by tenant, 383
— repayment of, 659
Incorporeal chattels, 688
— hereditaments, 688
Incumbent, pension to retiring, 638

Indecent exposure, 69
Indecent Advertisements Act (1889), 549
Indenture, 688
Indictable offences, 98
Indictment, 688
Indorsement, 207, 688
— of claim, 688
Industrial schools, committal to, 99
— societies, 363
Inebriates, retreats for, 550
— Acts (1879, 1888, 1898), 550
Infancy, 466
Infant, 466, 688
Infanticide, 689
Infant *en ventre sa mère*, 466
Infant Life Protection Act (1897), 551
Infant children, houses for receiving, 551
Infants, who are, 466, 692
— sales and leases on behalf of, 432
— breach of promise of marriage by, 446
— unborn, legacy to, 466
— do., guardian assigned to, 466
— custody of infants, 471
— contracts by, 466, 468
— ratification of do., 467
— contracts for necessaries, 468
— contracts of service by, 360
— undue influence upon, 470
— responsibility of, 469
— crimes by, 469
— liability for shares, 467
— *post obit* securities, 470
— catching bargains with heirs expectant, 470
Infectious Diseases Notification Act (1889), 544
Infectious Disease Prevention Act (1890), 546
Infectious disease, letting lodgings where, 376
— exposure after contracting, 518
— retention of body after death from, 546
Inferior courts, 689
In formâ pauperis, actions in, 46, 689
Information in chancery, 689
— criminal, 681
Informer, 689
Inhabited house duty, 662
Inheritance, law of, 423, 689
Injunctions, 10, 689
Injured Animals Act (1894), 569
In loco parentis, 689
Innkeepers, licences to, 559, 664
— closing of premises, 559
— offences and proceedings, 561
— liabilities to customers, 565
— infected rooms at inns, 567
— statutory protection to, 567
— lien of, on goods and property of guests, 567
— when and how they may sell the goods of customers, 568
In personam, 689
In re, 689
In rem, 689
Inquests, 52
Insanitary houses and areas, 509
Insolvent, 689
Insurance, 257
— where a contract of indemnity, 257
— *Life*, 258
— interests which give a right to insure, 258
— representations on application for insurance, 259
— risks to be avoided, 260
— non-payment of premiums, 260
— avoidance of policies, 260
— indisputable policies, 260
— suicide of the assured, 261
— assignment of policies, 261
— payment of claims, 262
— regulations as to insurance companies, 263
— payment of insurance moneys into court, 263
— by married man or woman, creating a trust, 454
— *Fire*, 264
— alteration of premises, 264
— conditions binding on insured, 265
— duration of policy, 265
— risk insured against, 266
— explosions of gas, 266
— where property insured twice, 267
— insurance of property on sale, 267
— change of residence and removal of goods, 268
— mortgagee's right when premises burnt down, 268

Insurance—*continued*
— *Marine*, 268
— descriptions of policies, 269
— particular and general average, 270
— amount to be recovered, 271
— *Accident*, 271
— nature of the insurance, 271
— death not from accident, 272
— *Fidelity*, 273
Inter alia, 689
Interim order, 689
Interlocutory proceedings, 689
Interest on mortgages, rate of, 689
— lawful rate of, 201
— do. for pawnbrokers, 284
International law, 689
Interpleader summons, 689
Interrogatories, 6, 689
Intervener, 689
Intestacy, 490, 689
— descent of real estate on, 423
— distribution of personal estate on, 491
— of poor persons, 493
— of seamen, 250
— of persons in naval, military, or civil service, 486
Intestate, 689
Intestates' Estates Act (1890), 492
Intoxicating liquor, debts for, 25, 568
Intoxication, contracts made during, 187
In transitu, 188, 198, 689
I. O. U., 211
Ipso facto, 689
Isolation Hospitals Act (1893), 593

JACTITATION OF MARRIAGE, 690
Jersey, marriage with deceased wife's sister in, 443
Jetsam, 256
Jettison, 690
Joinder of action, 690
— of issue, 690
Joint debtors, 174
— lessees, 169
— mortgages, 436
— tenants, 429, 690
— ownership, 429
— purchasers of estate, 408
Joint-stock companies (*see* Companies)
Jointure, 690
Judge-Advocate General, 690
Judgment debtor, 690
— debts, 32
Judicature Acts, 1, 3
Judicial Committee, 12
— separation, 456
— Trustees Act (1896), 504
Jurat, 690
Jury, trial by, 19-23
— lists, revision of, 22
— common jury, 690
— grand jury, 690
— petty jury, 690
— special jury, 19, 694
— exemptions from serving, 21
— *de medietate linguæ*, 690
— of matrons, 690
— in county court, 29
— at coroner's inquest, 52
Justices of the peace, 49

KEEPING HOUSE, 218, 690
Kilns, when a nuisance, 535
Kin, next of, their rights on intestacy, 491
Kindred, 690

LACHES, 690
Lading, bills of, 254
Land, measurement of, 299
— sale and purchase of, 403
— length of title, 403
— deposit money, 404
— liabilities of purchaser after contract is signed, 404
— death of parties, 405
— specific performance, 405
— mistake or fraud, 406, 407
— deficiency of parcels, 407
— carelessness in purchasing, 407
— existing rights, 407
— cutting down timber, 408
— timber blown down, 408
— joint purchasers, 408
— purchase by agent, 409
— delay in completion, 409
— costs of conveyance, 409

Land—*continued*
— leasehold property, 409
— reversionary interests, 410
— registration of title, 410
— absolute title to, 411
— possessory title to, 411
— settled, 425
— Conveyancing Act (1881, 1882, 1892), 430
— recovery of possession, 24, 432 434
— do. at petty sessions, 434
— purchased after making will, 479
— for charitable uses, 630
— for burial places, 631
— for places of worship, 631
— for public institutions, 631
— for public parks, 631
— charges, searches for, 404
Land Transfer Acts (1875 and 1897), 410
Landlord and tenant, 367
— hiring and letting house, 367
— tenancy from year to year, 368
— tenancy for less than a year, 368
— tenancy on sufferance, 368
— tenancy at will, 368
— implied tenancy, 369
— tenant's duty at end of tenancy, 369
— underletting, 369
— tenants for three months not liable for rates, 369
— payment of rates by outgoing occupier, 369
— tenant refusing to quit, 369
— quitting without notice, 370
— waiver of notice to quit, 370
— liability of guarantor of rent, 370
— tenant quitting with consent before end of tenancy, 370
— sub-tenant paying ground-rent, 370
— leases, 371, 694
— covenants running with the land, 372
— destruction of premises by fire, 372
— chimney taking fire, 373
— repairs, 373
— tenant or lodgers damaging premises or furniture, 374
— as to tenant's fixtures, 374
Landlord and tenant—*continued*
— furnished houses and lodgings, 375
— bugs in furnished houses, 375
— letting lodgings where infectious disease, 376
— escape of water from upper floor, 376
— protection of lodger's goods, 376
— theft of lodger's goods, 378
— notice to quit, 378
— when notice not necessary, 379
— forms of notice to quit, 379
— continuing in possession after notice, 380
— form of agreement for furnished house, 380
— do. for unfurnished apartments, 381
— do. for furnished lodgings, 382
— do. for lease of house, 382
— tenancy of a farm, 383
— custom of country, 383
— as to deducting land tax, property tax, &c., 383
— timber and underwood, 384
— fixtures, 384, 385
— rent, when due, 386
— double rent, 387
— security for rent, 387
— tender of rent, 387
— payment under protest, 388
— set-off against rent, 388
— distraint by executors, 388
— distraint by husband or wife, 388
— do. by receivers of rents, 389
— bankruptcy of tenant, 389
— fraudulent removal, 389
— separate holdings, 390
— distress for rent, 390
— second or double distress, 390
— general rule as to distraining goods for rent, 391
— what may be distrained, and what not, 391—395
— do. on agricultural holdings, 400
— time of day when distress may be made, 395
— when doors may be broken, 396
— proper parties to distrain, 397
— inventory and notice, 397
— when goods may be sold, 398

Landlord and tenant—*continued*
— valuation of goods, 398
— tenant's right to replevy, 398
— rescue and pound breach, 399
— wrongful distress, 399
— action to recover rent, 400
— recovery of tenements, 433
Land-tax, tenant deducting, 383
Larceny, 64, 690
— and embezzlement, 75
Larceny Act (1861), 93
Laundries, 358
Law merchant, 690
Lawyers' letters, 15
Lease, definition of, 691
— and release, 691
Leasehold, 691
Leaseholds, mortgage of, 439
— sale and purchase of, 409
Leases, 371
— forfeiture of, 433
— on bankruptcy of lessee, 237
— by mortgagees, 371
— to corporations, 372
— to partners, 169
— covenants running with land, 372
— premises destroyed by fire, 372
— form of agreement, 382
— by tenants for life, 425
— under Conveyancing Acts, 430
Legacy, 691
— duties, 665
Legacies, when to be paid, 494
— and devises of real and personal estate, 497
— residuary devise, 497
— lapsed or void legacies, 497
— how recoverable, 498
— to illegitimate children, 498
— recoverable in county court, 25, 498
Legal documents, preparing, 180
— estate, 691
— tender, 200
Lessee, 691
Lessor, 691
Letter of attorney, 695
— of licence, 243
Letters, contracts by, 182
— rights of property in, 302
— sending money by, 201
— stealing, or destroying, 66
— of administration, 691
— patent, 691
Letting horses and carriages, 281
Levari facias, 691
Libel and slander, 321
— imputations of drunkenness, 322
— do. of insolvency, 322
— do. of fraud, 322
— do. on professional men, 322
— do. of immorality, 323
— criticisms upon authors, 325
— criticisms by newspapers, 325
— libels on public men, 325
— libels affecting persons in their office or profession, 326
— trade libels, 326
— truth of slander or libel, 327
— repetition of slander, 327
— when privileged, 327, 329
— reports of proceedings in Parliament, 328
— do. at public meetings, 333
— libels on religion, 328
— indictment for libel, 329
— libel to extort money, 329
— punishment for libel, 330
— criminal informations, 330
— on dead person, 330
— seditious libels, 331
— obscene books, pictures, 331
— what is publication, 331
— use of type-writing, 332
— hissing at theatres, 332
— offences by printers, 333
— proceedings against newspapers, 333
— Law of Libel Amendment Act (1888), 333
— newsvendor or bookseller, liability of, 334
Libraries, public, 608
— offenders in, 608
Licence to deal in game, 122
— to kill game, 123
— to use a gun, 123
— to keep dogs, 137
— for billiards or bagatelle, 148
— to pawnbrokers, 283
— for menservants, 663
— for armorial bearings, 663
— for carriages, 664
— for sale of intoxicating liquors, 664
— do. on special occasions, 559
Licences obtainable at post-offices, 664

Lien, 691
— on goods for labour, 280
— of seller, 198
— of bankers and factors, 281
— of innkeeper, 567
Life estate, 691
— insurance, 258
— interest, 258
Ligan, 256
Light and air, rights to, 419
Light locomotives, 538, 540
— Railways Act (1896), 536
Lime-kiln, when a nuisance, 535
Limitation, statutes of, 9
— in case of trustees, 508
Lis pendens, 691
Literary institutions, sites for, 631
Livery of seisin, 691
— stable keepers, 134
Livings, presentations to, 637
— exchange of, 637
— plurality of, 638
Loan societies, rules of, 591
Loan of chattels, 277
— of horse and carriage, 281
— to infant, 143
— of money for play, 144
— by wife to husband, 449
Local government, 587
Locatio et conductio, 275
— *operis faciendi*, 276
Locator, 275
Locomotives on highways, 106, 538
— Act of 1896, 539
— Act of 1898, 538
— regulations for, 538, 540
Locum tenens, 691
Locus in quo, 691
— *sigilli*, 691
— *standi*, 691
Lodgers' Goods Protection Act, 376
Lodgers' right to vote, 576, 578
— damaging the premises or the landlord's furniture, 374
— rights of, on hiring apartments, 375
— goods, when not distrainable, 376
— when goods stolen, 378
— agreements as to apartments, 380, 381, 382
Lodging-houses, 512, 517
— exempt from house duty, 662
Lodgings, letting, where infectious disease, 376
London Cab Act (1896), 297
Lord Advocate, 691
— Chancellor of England, 1, 2
Lord lieutenants, 51
— High Steward, court of, 12
— paramount, 691
Lords justices, 691
Lost deeds, 182
— luggage, 293
— securities, 202
— or stolen articles, 94
Lotteries, 142
Luggage, loss of, 293
Lunar and calendar month, 181
Lunatic asylums, 549
— criminals, 100
— tenant for life, 425
Lunatics, contracts by and with, 177
— taking charge of, 549

MACHINERY, removal of, by tenant, 385
— as to distraining, 394
Machines, destroying, 75
Magistrates, 49
Main roads, 532
Maintenance, 692
Mala in se, 692
— *prohibita*, 692
Malfeasance, 692
Malicious injuries, 74
— neglect in municipal works, 77
— prosecution, 84
Malpractices in surgery, 86
Mandamus, 40, 692
Mandatum, 276
Manor, 692
Manslaughter, 62
Mantraps and spring-guns, 69
Marine insurance, 268
— store dealers, 68
Margarine, sale of, 522
Market gardens, 402
— overt, 94, 692
Marriage articles, 692
— contracts, 441
— parents' consent to, 441
— celebration of marriage, 441
— do. in chapels under Act of 1898, 441

Marriage—*continued*
— hours for celebration, 443
— void marriages, 443
— table of prohibited degrees, 444
— with deceased wife's sister, 443
— do. in Jersey, 443
— in false name, 444
— sham marriage, 445
— breach of promise of, 446
— do. by married person, 447
— misrepresentations as to person to be married, 447
— brokerage for negotiating marriages, 447
— conditions in restraint of, 448
— nullity of, 456
— after divorce, 458
— settlement, 692
— with ward in Chancery, 472
— giving false information on registering, 554
Marriages abroad, 110, 445
— between British and French or Belgian subjects, 110
Married women, property of, 449
— powers of, over property, 449
— loans to husband, 449
— actions by and against, 450
— if trading may be made bankrupt, 450
— ante-nuptial liabilities, 451
— restraints on anticipation in settlements, 451
— immunity of, under do., 475
— summary proceedings in questions of property, 451
— as executrix or trustee, 451
— life insurance by, 258, 454
— liability as to maintenance of husband, 451
— do. as to children, 452
— debts incurred by, 452
— do., husband's liability for, 452
— harbouring of, 453
— summary remedies of, 464
Marshalling assets, 692
Master of the Rolls, 1, 692
Master and apprentice, 359
Master and servant, 335
— general hiring, 336
— yearly hiring, 336
— mutual duty of, 344
— seduction of servant, 88, 346
— detaining tools unlawfully, 289
Master and servant—*continued*
— defamation of character, 329
— death of master, 337
— domestic servants, 337
— do. and first month, 339
— servant's liability to master, 340
— discharging servants, 340
— wrongful dismissal, 342
— giving "characters," 342
— false "characters," 79
— medical attendance, 344
— servant's title to clothes, 345
— enticing servant away, 345
— liability of master for negligence of servant, 345
— master, how far bound to indemnify servant, 346
— searching boxes where theft is suspected, 65
— liability for accidents to workmen, 347
Masters of Supreme Court, 692
Mayhem, 85, 692
Meals, obtaining, on false pretences, 564
Meat, bad, exposing for sale, 516
Medals resembling coin, 74
Medical law, 541
— registration, 541
— privileges of do., 541
— legal rights as to fees, 542
— dentists, 542
— chemists and druggists, 543
— sale of poisons, 543
— carbolic smoke-ball case, 543
— treatment, obscene advertisements of, 548
— notification of disease, 544
— local authorities and disinfection, 546
— vaccination, 547
— Act of 1898, 547
Memorial of a deed, 692
Menservants, license duty for, 663
Mercantile law, 145
Merchandise marks, 317
Merchant Shipping Act (1894), 244
Mesne profits, 692
Messuage, 692
Metalliferous Mines Act, 569
Metals and marine-store dealers, 68
Metric system, use of, in trade, 299
Michaelmas sittings, 692
— term, 702
Middlesex registry, 411

Military expeditions abroad, 112
— officer, half-pay of, cannot be attached for debt, 37
— service, money due to deceased persons in, 486
— service, tenure of, 337
— uniforms, unlawful use of, 572
Mine shaft, fencing of, 105
Mines and collieries, 569
Misdemeanor, agreement for compromising, 65, 75
— definition of, 59, 692
Misfeasance, 692
Misprision of felony, 692
— of treason, 692
Misrepresentation at sale, 406
— and deceit, 190
— as to the credit of a person, 191
— as to the fortune of a person about to be married, 447
"Missing word" competitions, 143
Mistake, contract made under, 407
Modus, 692
Money, securities for, 200
— left in bank unclaimed, 202
— misappropriation of, 38
— wrongly paid or extorted, 200
— where securities for, lost, 202
— attempt to extort, 75, 329
— lent at cards, &c., 141
— sending by post, 201
— tender of, 200
Monster, 692
Month, legal, 181
— in contract of sale, 193
Mortgage, definition of, 692
— under Conveyancing Acts, 435
— by assignment of life policy, 261
— by tenant for life, 425
— tacking, 435
— joint mortgage, 436
— purchasing mortgaged estate, 436
— foreclosure, 437
— right to redeem, 438
— rights as to rents, 438
— of leaseholds, 439
— of advowsons, 439
— rate of interest, 439
— equitable, 439
— costs where mortgagee is a solicitor, 440
— pledges of personalty, 440
— of stock, subject to duty, 180
Mortmain, 692
— Acts, 630
Motor-cars, 538, 540
Municipal corporations, 598
— elections, 601
— works, malicious neglect in, 79
— law, 692
Muniments, 692
Murder, 60
Music in streets, 570
Musical copyright, 307

NATURALIZATION ACTS, 108
Naval Discipline Act, 13
Naval expeditions abroad, 112
— officer, pay of, cannot be attached, 37
— service under Crown, 337
— service, money due to deceased persons in, 486
— uniforms, unlawful use of, 572
Necessaries, infants', 468
Ne exeat regno, 693
Negligence, accidents from, 102
— by sanitary authority, 103
— contributory negligence, 108
— of carriers, 291
— of gratuitous agents, 279
— of railway companies, 293
— of servant, 347
Nervous debility, advertisements relating to, 549
Next friend, 693
— of kin, 693
— — rights of, on intestacy, 491
Newspaper, copyright in, 304
— registration of, 304
— proprietors, responsibility of, for libel, 325, 333
Newsvendor and libel, 334
New trials, 7
— in criminal cases, 23
Night nuisances, 529
— poaching, 122
— time, in law, 122
Nisi prius, 693
Noise from machinery, 528
— from adjoining house, 528
Noisy trades, 528
Nolle prosequi, 693

Non est inventus, 693
Non-feasance, 693
Non-joinder, 693
Nonsuit, 693
Notice of Accidents Act (1894), 352
Notices to quit, 370
— for agricultural holdings, 400
— to trespassers, 114
Not proven, 693
Noxious trades, 523, 528
— drugs, administering, 72
Nudum pactum, 693
Nuisances, what are, 509, 526
— in households, 518
— proceedings to get rid of, 10, 509, 510, 526, 527
— houses unfit for habitation, 510
— noxious trades, 523, 528
— hospital for infectious diseases, 527
— from drains, 527
— pollution of rivers, 527
— noise of machinery, 528
— do. from adjoining house, 528
— do. at night, 529
— collecting crowds, 529
— on or near highways, 534
— locomotives on highways, 538
Nullity of marriage, 456
Nuncupative will, 485, 693

OATH, mode of taking, 45
Obiter dictum, 693
Obscene books, pictures, etc., 331
Obscenity and lewdness, 69
Obstructing footway, 534
— right of way, 414
— watercourse, 417
Offenders, criminal, prosecution of, 98
— punishment of, 99
Offensive trades, 523, 528
Official receiver, 693
— referees, 3
— secrets, disclosure of, 67
Officials, proceedings against, 100
Omnibuses, advertisements in, 297
One man companies, 162
Onus probandi, 693
Ordinary, 693
Ordination, age for, 635
Organ-grinders, 570
Originating summons, 693
Outlawry, 693
Overcrowding houses, 513
Overseers, 627
— assistant, 627
Oyer and terminer, 694

PAINTINGS, copyright in, 303
Palmer's Act, 694
Paraphernalia, wife's right to 452,
Parish clerks, 653
Parish councils, 617
— constitution of, 617
— members of, 619
— election of, 620
— annual meeting of, 620
— use of rooms by, 620
— powers of, 620—626
— officers of, 619, 626
— rules for, 622, 623, 626
— and postal facilities, 626
Parish meetings, 617
— proceedings at, 618
— rules for, 618, 623, 626
— powers of, 620—626
— and postal facilities, 626
Parishes, division of, 610, 617
— boundaries of, 610
— formation of new, 610
— documents relating to, 626
Parks, gift of land for, 631
Parliamentary elections (*see* Elections)
— register, 587
Parochial electors, 617
— do., register of, 588
Parol contract, 694
— evidence, 694
Partners and partnerships, 166
— nature of partnership, 166
— nominal partner, 166
— sleeping partner, 166
— private debts of a partner, 167
— liabilities of partners, 168
— retirement of a partner, 169
— death of partner, 169
— bankruptcy of partner, 169
— joint leases, 169
— partnership property, 169
— guarantee to or for, 216
Partnership Act (1890), 166
Party-wall Act (1774), 268

Passengers, rights of, 291, 293
— and guards on railway, communication between, 101
Patent, definition of, 694
— agents, 313
— of precedence, 694
Patents, designs, and trade-marks, 313
Patents, 313
— application for, 313
— opposition to grant of, 314
— duration and extension of, 314
— fees on, upon grant of, and for renewal, 314
— compulsory licences, 314
— infringement of, 315
— to bind Crown, 315
Patrimony, 694
Pauper law suits, 45
Pauper leaving casual ward, 73
Pawnbrokers, 283
Payment of money under protest, 200
— of money into court, 6
Peculiar, 694
Pedlars, 571
Peers, trial of, 12
— bankruptcy of, 232
Feine forte et dure, 694
Penal servitude, 97
Pendente lite, 694
Peppercorn rent, 694
Per capita, 694
Perjury, 694
Per my et per tout, 694
Perpetuities, 478
Personal rights and remedies, 101
— property, 694
— estates, distribution of, 491
Personalty, mortgages of, 440
Personation of voters, 584, 585
— of claimant, 67, 76
Per stirpes, 694
Petit: *see under* Petty jury, 694
Petition of right, 698
Petroleum, 531
Petty jury, 694
— larceny, 694
— sergeanty, 694
— sessions, 699
— treason, 702
Pews in churches, 647
— prescriptive right to, 419
Photographs, copyright in, 305
Physicians' fees, recovery of, 542
Piano on sale and hire, 184
— at inn on hire, 568
Picketing, 356
Pictures, copyright in, 303
Pigeon matches, 529
— shooting or killing, 65
Pigs, nuisance from, 518
Piracy, 695
Pirated goods, forfeiture of, 319
Plaint, 695
Play, money lent for, 141
Pleadings, 5, 695
Poachers and poaching, 121, 122
Poisons, sale of, 545
— administering, 73
Poisoned grain, seed, or flesh, 522
Poisoning game, 116
Police constables, 55
Pollution of rivers, 416, 527
— of water, 520
Ponds, malicious injury to, 70
Poor people's actions, 45
— persons dying without a will, 493
— rates, 627
Posse comitatus, 695
Possession, adverse, 9, 433
— of lands and tenements, recovery of, 24, 432, 434
Possessory title to land, 411
Post, sending money by, 202
— do. objectionable or explosive matter by, 77
Post mortem examination, 54, 695
Post obit bonds, 470, 695
Posthumous children, rights of, 492
Pound breach, 399
Power of appointment, 695
— of attorney, 691
Preaching in black gown, 643
Preferential payments in bankruptcy, 162, 233
Prerogative, 695
Prescription, 413, 695
Presentative advowson, 636, 676
Prevention of Cruelty to Children Act (1894), 474
Primâ facie, 695
Principal and agent, 170
— in crime, 695
Printers, offences by, 333
Prisoner, illness of, during trial, 23
Prison-made goods, importation of, prohibited, 320

Prisoners of war, wills of, 486
Privies, nuisances from, 519, 520
Privilege in libel cases, 327
Prize-fighting, 63
Probate, 489, 695
Probation of First Offenders Act, 66
Prochain amy, 695
Procuration for immorality, 85
Profits, secret, by agents, 172
Promise of marriage, breach of, 446
Promissory note, 210
Property, descent of, upon death, 423, 491
Property-tax and rent, 383
Prosecution, 695
— malicious, 84
— compromise of, 65, 75
Prostitution, living on earnings of, 90
Protest, payment under, 200
Provident societies, 363
Proving wills, 489
Public Authorities Protection Act (1893), 100
Public Bodies Corrupt Practices Act (1889), 634
Public elementary schools, 606
— fêtes, nuisances from, 529
— health and good order, 509
— officials, proceedings against, 102
— stores, dealing in, 78
Public Health (London) Act, 513
Public-houses, payment of wages in, 354
Public Libraries Act (1892), 608
Public Worship Regulation Act, 13
Publici juris, 695
Publishers and authors, 310
Puffing at auctions, 134, 403
Puisne, 695
Punishment of crimes, 97
Pur autre vie, 695

QUÂ, 695
Quails, tenant's right to kill, 124
Qualified fee, 695
— indorsement, 205
Quamdiu se bene gesserit, 626
Quantity of an estate, 696
Quantum meruit, 696
— *valeat*, 696
Quare impedit, 696
Quarries, regulations as to, 569
— fencing of, 106
Quarter-sessions, 698
Quash, 696
Quasi-contract, 696
— trustee, 696
Queen's Advocate, 696
— Bench, 696
— Counsel, 696
— evidence, 696
— Proctor, 696
Qui tam, 696
Quia timet, 697
Quit rent, 697
Quorum, 697
Quo warranto, 697

RABBITS, 118
Races, stakes at, 138
— wagers and bets at, 138
— cheating at, 141
— in Metropolitan district, 141
Rack rent, 697
Railway, obstructing, 75
— defective fences on, 82
— trespass on, by cattle, 82
— compensation for accidents on, 102
— sparks from engine on, 104
— crossing highways, 107
— communication between passengers and guards, 103
Railway companies as carriers, 291 293
— as warehousemen, 296
— loss of articles in transit, 295
— carrying over other lines, 295
— rolling stock exempt from distress, 391
— servants, hours of, 355*d*
Rape, 69, 697
Rates, appeals against, 629
— distress for, 629
— rate-books, inspection of, 628
— exemption of churches and chapels, 628
— do. of Sunday and ragged schools, 628
— do. of voluntary schools, 628
— Agricultural Rates Act, 629
Ratione tenuræ, 697

Real action, 697
— estate, 423, 697
— property, 697
— representative, 424
Realty, 697
Rebutter, 697
Rebutting evidence, 697
Receiving order, 697
— stolen goods, 68
Recognizance, 97, 697
Recorder, 697
Recreation grounds, sites for, 631
Reddendum, 697
Redemption of mortgage, 438, 697
— of tithes, 655
Reduction into possession, 697
Reference, 697
Reformatory schools, 99
— retreats for drunkards, 550
Refresher, 697
Refreshment houses, 564
Refuse, "house" and "trade," 519
Registers, forging of, 70
Registration of title to land, 410
Rejoinder, 697
Relator, 697
Release, 698
Remainder, 698
Remanet, 698
Remedy, medical, advertised with offer of money, 543
Remoteness, 698
Repair of houses, 373
Replevin, 698
Replevy, tenant's right to, 398
Reply, 698
Requisitions on title, 698
Rescue and pound breach, 399
Residuary devisee, 698
— legatee, 698
— do. and lapsed legacies, 497
Residue, 698
Res judicata, 698
Restitution of conjugal rights, 456, 460
Restraint on anticipation, 454, 698
— of trade, 176, 189
Resulting trust, 698
Retainer, 698
Reversion, 698
Reversioners, bargains with, 470
Reversions, sale of, 410
Riding or driving on footpath, 534
— over land without leave, 113
Rights, personal, 99
Rights of way and water, 413, 415
— of common, 417
— to light and air, 419
Rioters, damage by, 63, 591
Ritual, legal and illegal, 641
Rivers, injuring banks of, 70
— pollution of, 416, 527
Road, rule of the, 536
Robbery, 64, 77
— of hired chattels, 277
Rogues, incorrigible, 73
— and vagabonds, 72
— living on earnings of prostitution, 90
Rolling stock of railway exempt from distress, 391
Royal arms, use of, 316
— warrant, misrepresentation as to holding, 320
Royalty, 698
Rubbish, placing on highways, 534
Running with the land, 698
Rural district councils, 605
— sanitary authorities, 605

SACRILEGE, 68, 699
Sailors, contracts by, 244
— supply and engagement of, 245
— provisions to be inspected, 247
— wages, rights as to, 247
— wages may not be attached or assigned, 248
— allotment of wages, 249
— illness of seamen, 249
— not bound to go in unseaworthy ship, 245
— property of deceased, 250, 486
— wills of, 486
Sale and purchase of estates, 403
— of bread, 300
— of coal, 299
— of hops, 300
— bills of, 211
— contract of sale, 192
— conditions and warranties, 193
— by sample, 195
— transfer of property, 195
— transfer of title, 196
— performance of contract, 197
— rights of unpaid seller, 198
— stoppage *in transitu*, 199

Sale of Goods Act (1893), 192
Salvage, 699
Sandgrouse, 127
Sanitary offences, 518
Satisfaction, 699
Satisfied terms, 699
Savage and ferocious dogs, 138
Scandalum magnatum, 699
Scavenging, 519
School boards, 606
Schools, grant of sites for, 631
Scienter, 699
Scientific societies, sites for, 631
Scintilla juris, 699
Scire facias, 699
Sea, carriage of goods by, 297
— removing marks at, 74
— banks, damaging, 70
— fishing service, 130
Search for judgments, 404
Second cousin, 681
Securities, where lost, 202
Secus, 699
Seditious libels, 331
Seduction, 90, 345
Seed, poisoned, 522
— adulteration of, 522
Seignory, 699
Seisin, 699
Seller's lien, 198
Semble, 699
Separation deeds, 453
Sequestration, 36, 236, 636, 699
Servants (*see* Master and servant)
Servient tenement, 699
Sessions, 699
Settled land, 425, 699
— tenant for life, powers of, 425
— — contracts by, 425
— sale or lease of mansion, 426
— building lease, 426
— timber, 427
Settlement, 699
— deeds of, 411
— of pauper, 700
Settlor, 700
Severalty, 700
Sewers and drains, 519
Sexton, 654
Shares, sales of, 146, 147, 157
— charging, 35
— paid-up, 158
— title to, 155
Sheep, trespass of, on railway, 80
— straying on highway, 536
Sheep—*continued*
— injuries to, by dogs, 135
— do., in charge of bailee, 280
— scabbed, on commons, 417
Sheriff, office of, 51
— powers and duties of, on taking execution, 34
Ship-broker's commission, 251
Ships, registration of, 244
— sale of, 244
— exhibiting false lights to, 74
— unseaworthy, 245, 246
— power to detain, 247
— overloading foreign, 247
— life-saving appliances, 247
— deck and load lines, 246
— losses on board lighters, 255
Ships of war, firing, 60
Shoeing horse, farrier's liability on, 137
Shooting, rights of, 119
— over land without leave, 113
Shops, working hours in, 362
Shrubs, stealing or injuring, 77
— removal of, by tenant, 385
Sidesmen, 653
Sign manual, 700
Simony, 636, 700
Simple (or parol) contract, 175, 694
Sinecure, 700
Sine die, 700
— *prole*, 700
Singing in streets, 570
Sites, grants of, 631
Sittings and terms, 700
Slander (*see* Libel)
Slander of Women Act (1891), 323
Slaughter-houses, 520
Smoke, consumption of, 520
Smuggled goods, 78
Smuggling, 78
Snipes, 124, 125
Socage, 700
Soldiers, wills of, 485
Solicitor, 700
Solicitor-general, 700
Solicitors, 14
— and clients, 14, 16, 17
— costs of, 15, 17
— agreements with clients, 17
— unqualified persons as, 18
— purchase from client by, 409
Solicitors Act (1888), 14
Special constables, 58
— damage, 700

Special jurors, 19, 700
— pleading, 700
Specialty, 700
Specific performance, 700
Spirits, debts for, 568
— not to be sold to children, 561
— adulteration of, 515
Sporting, right of, on purchase of estate, 407
Spring-guns and man-traps, 69
Stakes at races and matches, 138
Stallion, keeper of, lien on mare, 280
Stamp duties, 179
— agreements subject to, 179
— penalty for neglecting, 181
— on receipts upon bills of exchange, 203
Stamps, how to cancel, 179
Statement of claim, 5, 695, 700
— of defence, 700
Status, 700
Status quo, 700
Statute of Distributions, 491, 701
— of Frauds, 701
— of Limitations, 9
— of Uses, 701
Statute-barred, 701
Steam-engines near highways, 535
— on highways, 106, 538
Still-born children, burial of, 555
Stipendiary magistrates, 50, 701
Stock, 701
Stock exchange law, 145
Stockbroker dealing with customers' securities, 147
Stocks and shares, sales of, 146, 147
— charging, 35
— mortgages of, 180
Stolen property, rights as to, 94
— goods, or money, receiving, 68
— recovery of, 95
— reward for restoration of, 75
Stoppage *in transitu*, 183, 198
Stores, public, dealing in, 78
Straying animals on railway, 80
— do. on highway, 536
Streets, music in, 570
— noises in, at night, 529
— improvement of, 532
Stuff-gownsman, 701
Subpœna to witnesses, 43, 701
— to produce documents, 44, 701
Succession duties, 665
Suit, 705
Sulphuric acid works, 523
Summary jurisdiction, courts of, 13, 98
Summary Jurisdiction (Married Women) Act (1895), 464
Summons, 701
— in chambers, 701
— originating, 693
— writ of, 4, 704
Sunday, trading on, 557
— horse dealing on, 133
— killing game on, 116
— killing wild fowl on, 124
Superior courts, 701
Supreme Court of Judicature, 1
Sureties, 214
— contributions amongst, 216
Surgeons and their fees, 542
Surgery, malpractices in, 86
Surrebutter, 701
Surrejoinder, 701
Surrogate, 701
Swans, property in, 127
Sweepstakes, 142
Syphilis, advertisement relating to, 549

TACKING, 701
Tail, 701
Taxes, assessed, 659
Technical Instruction Acts, 609
Telegrams, forgery of, 70
— divulging contents of, 70
Tenancy in common, 702
Tenant, 702
— for life, 425
— in common, 429, 702
— in fee simple, 428
— in tail, 425
— joint, 429
Tenant *in capite*, 702
Tenant-right, 702
Tenants' Compensation Act, 402
Tender of rent, 387
— of money in payment, 200
Tenement, 702
Tenendum, 702
Tents, pitching on highways, 534
Tenure, 702
Term of years, 702
Terms and sittings, 704, 702
Terrier, 702
Territorial waters, 702

Testament, 702
Testator, 702
Testatrix, 702
Testatum, 702
Testimonium, 702
Theatres, hissing at, 332
Threatening letters, 76, 77
Threats, contracts made under, 188
— money paid under, 201
Threshing machines, 109, 535
Ticket-of-leave convicts, 78
Timber and underwood, rights as to, 384, 408, 427
Time bargains, 146
Tinkers, 571
Tithe Act (1891), 656
Tithe rent-charge, 655, 702
Tithes, 655, 702
— of district churches, 656
Title to goods, transfer of, 196
— to land, 403
— do. where bad, 407
— registration of do., 410
— covenants for, 430
— by adverse possession, 432
— action of, in county court, 433
Title deeds, mortgage by deposit of, 439
— when lost or destroyed, 182
Tools exempt from distraint for rent, 391, 392
— protected in bankruptcy, 234
Tort, 702
— feasor, 702
Tortious, 702
Traction engines, 106, 538
Trade description, definition of, 318
— remedy when misleading, 317
— warranty of, 320
— fixtures, 385
— do., as to distraining, 392
— refuse, removal of, 519
— restraint of, 176, 189
Trade-marks, registration of, 316
— infringement of, 316
— forgery of, 319
— application of, 319
— prosecutions under Act, 320
— warranty of, 320
Trade-unions, actions against members of, vi.
Traders, combinations of, 189
Trades, noisy and noxious, 523
Traitors, punishment of, 60
Transcript, 702
Traverse, 702
Treason, 59, 702
Treason-felony, 60
Treasure-trove, 97, 702
Trees and shrubs, injuring, 77
— removal of, by tenant, 386
— overhanging land, 421, 533
— growing into land, 422
— by the sides of highways, 534
Trespass, 703
— to land, 80, 113, 120
— in a dwelling-house, 80
— where title in question, 81
— in pulling down houses, 81
— of cattle *damage feasant*, 81
— defective fences, 81, 82
— by stray cattle on railway, 82
— by diseased cattle, 82
— by dogs, 83
— to the person, 83
— by false imprisonment, 84
— by putting dangerous things in motion, 85
— by riding or shooting, 113
— by firing from highway, 113
— by fox-hunters, 113
— notice to trespassers, 114
— trespass after notice, 114
— in search of game, 114
— arresting trespassers, 115
— seizing guns and dogs, 120
— in pursuit of snipes, &c., 125
Trial of action, 7
— interrupted by illness of juryman, prisoner, or judge, 23
— points of law reserved at, 23
Tricycles, 537
Trinity sittings, 703
— term, 702
Trout and char, close time for, 129
— packages to be marked, 130
Trover, 96, 703
Truck Acts, 353
— official memorandum as to, 355
Trust Investment Act, 505
Trusts and trustees, 500, 703
— of a will, 495
Trustee Acts (1888, 1893), 508
Trustees, actions against, 10, 508
— trustees and their duties, 500
— receipts by trustees, 496
— and executors, 496
— purchase of trust estate by, 500
— misappropriating moneys, 38
— mixing trust moneys, 501

Trustees—*continued*
— allowances to, 502
— profits of trust money cannot be retained by, 502
— advice obtainable by, 503
— punishment of, when fraudulent, 503
— Judicial Trustees Act, 504
— relief of, in case of breach of trust, 504
— investments by, 504
— payment of trust funds into county court, 25
— removal of trustee, 506
— appointment of, 506, 631
Trustees' Appointment Act, 631
Turnpike trustees, 532
Tutors, engaging, 339

ULTRA VIRES, 703
Unchastity, imputing, 323
Under-lease, 703
Underwood, rights as to, 384
Underwriters, 268
Undue influence in contracts, 188
— wills made under, 479
— over infants, 470
— under guise of religion, 176
— at elections, 584
Unfurnished apartments, form for letting, 381
Unity of possession, 703
— of seisin, 703
— of title, 703
Unstamped agreements, 180
Urban district councils, 604
Uses, 703
Usury, 201
Uterine brother or sister, 703

VACCINATION, 547
— Act of 1898, 547
Vadium, 276
Vagrancy, 72
— idle and disorderly persons, 72
— rogues and vagabonds, 72
— incorrigible rogues, 73
Vagrancy Act (1898), 90
Velocipedes, 537
Venue, 703
Verdict, 703
Vermin traps, accidents from, 137
Versus, 703
Verminous persons, 569
Vested remainder or interest, 703
Vesting order, 703
Vestments, illegal, 641
Vestries in the Metropolis, 611, 612
Vestry meetings, 611
Veterinary surgeons, 137
Vexatious Actions Acts (1896), 10
Vibration and noise, 420, 528
Vicar, designation of, 637
Vice-chancellor, 704
Village greens, rights as to, 418
Vivâ voce, 704
Vivisection, 544
Voluntary Conveyances Act, 412
— settlements, 411
— Schools Act (1897), 607, 628
Volunteers, contracts by, 335
— injuring property of, 78
— rules of, 572

WAGERS AND BETS, 138
Wages, payment of, in goods illegal, 353
— payment of, in public-houses, 354
— of seamen, 247
Walls, ownership of, 421
Wapentake, 704
Ward of court, 471, 704
— marriage with, 472
Warehousemen, liabilities of, 279
Warranty, 189, 193, 704
— on sale of horse, 133
— of feeding-stuffs, 521
— of fertilisers, 521
Warren, 704
Waste, 704
— impeachment of, 692
Wastes of a manor, 704
Water, escape of, in house, 376
— rights of, 415
— pollution of, 416, 520, 527
— supply of, 524
— companies, powers of, 524
— offences by consumers of, 525
— compulsory supply of, 525
— rates, assessment of, 524

Waterclosets, neglect of, 518, 520
Watercourses, 415, 417
Waterworks, malicious neglect in, 356
Waveson, 704
Way, rights of, 414
Way-leave, 704
Weights and measures, 298
Weights and Measures Act (1878), 298
— do. do. (1889), 298
— do. do. (1897), 299
Wells and watercourses, 415, 417
— pollution of, 416, 520, 527
Whale fisheries, 132
Wharfingers, liabilities of, 279
Whist, money lent for, 144
Whole-blood, 704
Widow's dower, 455
— freebench, 455
Wild birds, protection of, 125
— fowl, killing of, 124
Will, definition of, 704
— how to be made, 477
— signing and witnessing wills and codicils, 477, 485
— where will has been lost, 478
— restrictions on perpetuities and accumulations, 478
— stealing or altering, 66
— where lands purchased after making will, 479
— testamentary capacity, 479
— undue influence, 479
— domicile of testator, 480
— probate of, relating to foreign property, 481
— revoking and cancelling, 481
— forms of wills and bequests, 481
— do. of codicils, 484
— of soldiers and sailors, 485
— of prisoners of war, 486
Will—*continued*
— construction of wills, 487
— deciphering wills, 487
— proving wills, 489
— depository for wills, 489
— instructions for reading wills at Somerset House, 489
Windfall timber, 384, 408, 427
Winding-up companies, 159, 704
Windows, rights to light and air from, 419
Witnesses, compelling attendance of, 44
— payment of, 44
— on public inquiries, protection of, 45
Women and children in agricultural gangs, 361
— — in factories, 356
Woodcocks, 124
Working hours in shops, 362
Workmen, accidents to, 347
— do. in factories, 357
Workmen's Compensation Act (1897), 349
Workshops and factories, 356
Worship, Public, Regulation Act, 13
Wounding, 83
Wrecks and wreckage, 255
— destroying, 76
Writ of summons, 4, 704
— prerogative, 704
Writing, when contract must be in, 182

YORKSHIRE, registration of land in, 411
Young offenders, 97
Youthful offenders, 66

PRINTED BY J. S. VIRTUE AND CO., LIMITED, CITY ROAD, LONDON.

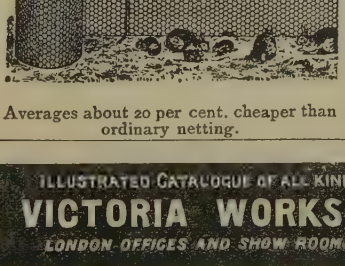
BAYLISS JONES & BAYLISS'

Iron and Wire Fencing, Tree Guards, Gates, etc.

Hurdles, Railing, Wine Bins, Wheel-Barrows, Stable Fittings, Corrugated Sheets, etc.

The Combined-Mesh Galvanised Wire Netting.
No 617.

Write for Price List before ordering elsewhere.



Averages about 20 per cent. cheaper than ordinary netting.

Dog Kennel Railing.

Lists Free

WROUGHT-IRON SEAT

AND TREE GUARD COMBINED.

ILLUSTRATED CATALOGUE OF ALL KINDS OF HURDLES, FENCING, GATES, &C., FREE.

VICTORIA WORKS, WOLVERHAMPTON.

LONDON OFFICES AND SHOW ROOMS—139 & 141, CANNON STREET, E.C.

Please Mention this Publication.

Waterlow Bros. & Layton's

LEGAL DIARY

AND

ALMANAC

For 1899,

CONTAINS

Complete Legal Directory for England & Wales.

Lists of Irish and Scottish Practitioners.
Commissioners and Law Agents for the Colonies and Foreign Parts.
Banking, Insurance, and Parliamentary Directories.

List of Town Clerks, Recorders, Clerks of the Peace, Undersheriffs, County Court Registrars, &c., in England; also the Principal Law Courts in Scotland and Ireland.

And useful Papers on the Land Transfer Acts, Bills of Sale, Legacy and Succession Duties, Articled Clerks, Registry of Deeds, Registration of Trade Marks, Passports, Naturalization of Aliens, &c.

Three days on each page, Cloth Gilt, 3s. 6d.
Two days on each page, Half-bound Law Calf, 5s.
One day on each page, Half-bound Law Calf, 6s.
Two pages to each day, Half-bound Law Calf, 8s. 6d.

Can be had ruled, with or without cash columns.

The Diary portion of the three latter is *paged*, and supplied with an Index, and also contains Register of Fire Insurance Premiums, showing Name of Office, Dates, when Due and Paid, and Last Days of Payment. Register of Rent, showing when Due and Date of Payment. Register of Mortgages.

Demy 8vo. Price 7s. 6d.; Cash with order, 6s.; postage 6d.

THE LAW OF EMPLOYERS' LIABILITY

AND

WORKMEN'S COMPENSATION.

BY THOMAS BEVEN

(*Of the Inner Temple and of the South Eastern Circuit*),

Author of Treatises on the Employers' Liability Act, 1880, and Negligence at Law.

LONDON: WATERLOW BROS. & LAYTON, LIMITED,
LAW STATIONERS, PRINTERS, AND PUBLISHERS,
24 & 25, BIRCHIN LANE, E.C.

CITY OF GLASGOW LIFE ASSURANCE CO.

FOUNDED 1838.

—*—

FUNDS, £2,000,000.

—*—

Moderate Rates of Premium for every class of Assurance.

LOANS GRANTED ON

FREEHOLD AND LEASEHOLD PROPERTIES,

AND ON

LIFE INTERESTS AND REVERSIONS.

Head Office:

30, RENFIELD STREET, GLASGOW.

London Office:

12, KING WILLIAM STREET, E.C.

J. S. VIRTUE & CO.,

Limited, - - - - - - -

"The Art Journal" Office, - -

294, CITY ROAD, LONDON, E.C.

LETTERPRESS, LITHOGRAPHIC, ETCHING, AND COPPERPLATE PRINTERS. • • ELECTROTYPERS. • • BOOKBINDERS.

PRINTING *of Illustrated Magazines* • • • A SPECIALITÉ

PUBLIC COMPANIES, BANKS,

INSURANCE COMPANIES, *

LEGAL AND COMMERCIAL CLASSES GENERALLY, *

PARLIAMENTARY AND VOTING LISTS, * * *

ILLUSTRATED CATALOGUES, *

PUBLISHERS' AND AUTHORS' BOOKS. * * *

Estimates Free; or a Representative will call on receipt of enquiry.

J. S. VIRTUE & CO., LIMITED, 294, CITY ROAD, LONDON, E.C.

LANDLORDS' & TENANTS' OFFICE

FOR THE

Legal and Speedy Recovery of Rents

AND

Possession of Tenements.

SPENCER & SONS,

(*ESTABLISHED* 1876)

Certificated Distraining Bailiffs,

80 & 109, KING'S CROSS ROAD, W.C.

(Next to Clerkenwell Police Court.)

RENTS COLLECTED.

DISTRAINTS LEVIED.

TROUBLESOME TENANTS EJECTED.

Any distance. *Letters receive prompt attention.*

Messrs. SPENCER & SONS will be pleased to advise intending Clients by letter or otherwise, without fee.

ABSOLUTELY NECESSARY FOR SOLICITORS, HOUSE AND ESTATE AGENTS, INSURANCE AGENTS, AND ALL PERSONS INTERESTED in the PURCHASE or VALUATION of ESTATES AND PROPERTIES.

Now Ready, 25th Edition, with many New Tables, and Rates of Interest greatly extended.

Demy Octavo, Price 8s. Cloth.

INWOOD'S TABLES

OF INTEREST AND MORTALITY

FOR THE

PURCHASING OF ESTATES

AND

VALUATION OF PROPERTIES.

INCLUDING

ADVOWSONS	LEASEHOLDS
ASSURANCE POLICIES	LIFE INTERESTS
COPYHOLDS	MORTGAGES
DEFERRED ANNUITIES	PERPETUITIES
FREEHOLDS	RENEWAL OF LEASES
GROUND RENTS	REVERSIONS
IMMEDIATE ANNUITIES	SINKING FUNDS

ETC. ETC.

Twenty-fifth Edition, Revised and Extended.

WITH LOGARITHMS OF NATURAL NUMBERS

AND

THOMAN'S LOGARITHMIC INTEREST AND ANNUITY TABLES

LONDON: CROSBY LOCKWOOD & SON, 7, STATIONERS' HALL COURT, E.C.

WILLIAM CLOWES AND SONS' NEW BOOKS.

Just published, Third Edition, revised, crown 8vo., cloth, 5s.

THE OFFICE OF MAGISTRATE. By HAROLD WRIGHT, B.A., LL.B., of the Middle Temple, Barrister-at-Law, Stipendiary Magistrate for the Staffordshire Potteries, Author of "A Treatise on the Bankruptcy Act, 1883," &c.

"This little book contains a capital epitome of the duties of a magistrate, written in popular language. It is full of practical hints and suggestions."—*Law Times.*

Second and Greatly Improved Edition, demy 8vo, cloth, 6s., cash price 5s.

TABLE OF THE ENGLISH DEATH DUTIES. Showing at a glance the Incidence of the English Death Duties. With various useful notes and references to decisions. Designed as a means of easy and quick reference to these complicated Duties. By E. HARRIS, of the Legacy and Succession Duty Department, Somerset House.

Demy 8vo, cloth, 21s.

THE LAW AFFECTING SOLICITORS. A Treatise on the Law Affecting Solicitors of the Supreme Court. By ARTHUR P. POLEY, B.A. (late Scholar of St. John's College, Oxford), of the Inner Temple and Midland Circuit, Barrister-at-Law. With Appendix containing the Statutes bearing on the subject.

Demy 8vo, cloth, 12s. 6d.

THE STOCK EXCHANGE (THE LAW AND PRACTICE OF). With Appendices. Containing the Rules and Regulations annotated, and Forms and Instruments accompanying a Mortgage of Securities. By B. E. SPENCER BROADHURST, M.A., B.C.L., of the Inner Temple, Barrister-at-Law.

Second Edition, demy 8vo, cloth, 10s. 6d.

FRIENDLY SOCIETIES (THE LAW RELATING TO), comprising the Friendly Societies Act, 1896, and the Collecting Societies and Industrial Assurance Companies Act, 1896. Together with an Appendix, containing model Rules, and Forms appended to the Treasury Regulations, 1897. By F. BADEN FULLER, B.A. (Oxon), of the Inner Temple, Barrister-at-Law.

Demy 8vo, cloth, 20s.

THE LAW OF HUSBAND AND WIFE. By CHARLES CRAWLEY, M.A., of Lincoln's Inn, Barrister-at-Law, late Fellow of Downing College, Cambridge, and Author of "The Law of Life Insurance."

"This book is the most comprehensive and valuable one on the law of husband and wife with which we are acquainted."—*Athenæum.*

Third Edition, thoroughly revised to date, demy 8vo, cloth, 15s.

SCRUTTON'S LAW OF COPYRIGHT. Including the American Copyright Act, the Berne Convention, the consequent Order in Council, and Cases to Date. Also Reference to, and Explanation of, the Customs Act of 1876 relating to the Importation of Pirated Editions of English Copyright Books by the British Colonies. By THOMAS EDWARD SCRUTTON, M.A., LL.B., Barrister-at-Law.

"We think it not only the easiest, but the most useful and practical work on copyright."—*Law Quarterly Review.*

Fourth Edition, demy 8vo, cloth, 20s.

MOORE'S PRACTICAL FORMS OF AGREEMENTS. Containing nearly 200 Forms relating to Sales and Purchases, Building and Arbitrations, Letting and Renting, Debtors and Creditors, and numerous other subjects. With a variety of useful Notes. By H. MOORE, Esq., Author of "A Handbook of Practical Forms," &c. Fourth Edition, thoroughly revised. By HERBERT PERCIVAL, of the Inner Temple, Esq., Barrister-at-Law.

LONDON: WM. CLOWES & SONS, LIMITED, Law Publishers, 27, Fleet Street, E.C.

CROSBY LOCKWOOD & SON'S

Books for Engineers, Builders, Local Authorities, &c.

THE WATER SUPPLY OF TOWNS AND THE CONSTRUCTION OF WATERWORKS: A Practical Treatise for the Use of Engineers and Students of Engineering. By W. K. BURTON, A.M.Inst. C.E., Professor of Sanitary Engineering in the Imperial University, Tokyo, Japan. With an Appendix on "The Effects of Earthquakes on Waterworks," by JOHN MILNE, F.R.S. Second Edition, revised and enlarged. With numerous Plates and Illustrations. Super-royal 8vo, 25s. buckram.

"Mr. Burton's practical treatise shows in all its sections the fruit of independent study and individual experience. It is largely based upon his own practice in the branch of engineering of which it treats, and with such a basis a treatise can scarcely fail to be suggestive and useful."—*Saturday Review.*

"The subjects seem to us to be ably discussed, with a practical aim to meet the requirements of all its probable readers. The illustrations are excellent."—*Lancet.*

TRAMWAYS: Their Construction and Working. Embracing a Comprehensive History of the System; with an exhaustive Analysis of the various Modes of Traction; a Description of the Varieties of Rolling Stock; and ample Details of Cost and Working Expenses. New Edition. Thoroughly Revised, and Including the Progress recently made in Tramway Construction. By D. KINNEAR CLARK, M.Inst.C.E. With numerous Illustrations and Folding Plates. In One Volume, 8vo, 780 pages, price 28s. buckram.

"All interested in tramways must refer to it, as all railway engineers have turned to the author's work, 'Railway Machinery.'"—*Engineer.*

ON THE DRAINAGE OF LANDS, TOWNS, & BUILDINGS. By G. D. DEMPSEY, C.E. Revised, with large Additions on RECENT PRACTICE IN DRAINAGE ENGINEERING, by D. K. CLARK, M.Inst.C.E. Second Edition. Fcap. 8vo, 5s. cloth.

"The new matter added to Mr. Dempsey's excellent work is characterised by the comprehensive grasp and accuracy of detail for which the name of Mr. D. K. Clark is a sufficient voucher."—*Athenæum.*

THE HEALTH OFFICER'S POCKET-BOOK: A Guide to Sanitary Practice and Law. For Medical Officers of Health, Sanitary Inspectors, Members of Sanitary Authorities, &c. By EDWARD F. WILLOUGHBY, M.D. (Lond.). Fcap. 8vo, 7s. 6d. cloth.

"A mine of condensed information of a pertinent and useful kind on the various subjects of which it treats. . . . The different subjects are succinctly but fully and scientifically dealt with."—*The Lancet.*

LOCKWOOD'S BUILDER'S PRICE BOOK for 1899. A Comprehensive Handbook of the Latest Prices and Data for Builders, Architects, Engineers, and Contractors. Re-constructed, Re-written, and Greatly Enlarged. By FRANCIS T. W. MILLER. 750 closely-printed pages, Crown 8vo, 4s. cloth.

"This book is a very useful one, and should find a place in every English office connected with the building and engineering professions."—*Industries.*

"In its new and revised form this Price Book is what a work of this kind should be—comprehensive, reliable, well arranged, legible, and well-bound."—*British Architect.*

LONDON: CROSBY LOCKWOOD & SON, 7, STATIONERS' HALL COURT, E.C.

Complete Catalogues on Application.

CROSBY LOCKWOOD & SON'S
Books for Auctioneers, Land Agents, Valuers, &c.

AUCTIONEERS: THEIR DUTIES AND LIABILITIES: A Manual of Instruction and Counsel for the Young Auctioneer. By ROBERT SQUIBBS, Auctioneer. Second Edition, Revised and partly Re-written. Demy 8vo, 12s. 6d. cloth.

"May be recommended as giving a great deal of information on the law relating to auctioneers, in a very readable form."—*Law Journal.*

THE APPRAISER, AUCTIONEER, BROKER, HOUSE AND ESTATE AGENT, AND VALUER'S POCKET ASSISTANT, for the Valuation for Purchase, Sale, or Renewal of Leases, Annuities and Reversions, and of property generally; with Prices for Inventories, &c. By JOHN WHEELER, Valuer, &c. Sixth Edition. Re-written by C. NORRIS. Royal 32mo, 5s. cloth.

"Contains an admirable and clearly-arranged list of prices for inventories, and a very practical guide to determine the value of furniture, &c."—*Standard.*

THE AGRICULTURAL VALUER'S ASSISTANT: A Practical Handbook on the Valuation of Landed Estates; with Forms of Tenant-Right Valuations, Lists of Local Agricultural Customs, Scales of Compensation under the Agricultural Holdings Act, &c., &c. By TOM BRIGHT, Agricultural Surveyor. Second Edition. Crown 8vo, 5s. cloth.

"Full of tables and examples, the valuation of tenant-right, estates, labour, contents and weights of timber, and farm produce of all kinds."—*Agricultural Gazette.*

POLE PLANTATIONS AND UNDERWOODS: A Practical Handbook on Estimating the Cost of Forming, Renovating, Improving, and Grubbing Plantations and Underwoods, their Valuation for Purposes of Transfer, Rental, Sale or Assessment. By TOM BRIGHT. Crown 8vo, 3s. 6d. cloth.

"To valuers, foresters and agents it will be a welcome aid."—*North British Agriculturist.*

"Well calculated to assist the valuer in the discharge of his duties, and of undoubted interest and use both to surveyors and auctioneers in preparing valuations of all kinds."—*Kent Herald.*

THE LAND IMPROVER'S POCKET-BOOK OF FORMULÆ, TABLES, AND MEMORANDA required in any Computation relating to the Permanent Improvement of Landed Property. By JOHN EWART. Second Edition. Royal 32mo, oblong, 4s. leather.

"A compendious and handy little volume."—*Spectator.*

THE LAND VALUER'S BEST ASSISTANT: Being Tables on a very much improved Plan, for Calculating the Value of Estates. By R. HUDSON, C.E. New Edition. Royal 32mo, 4s. leather.

"Of incalculable value to the country gentleman and professional man."—*Farmers' Journal.*

HANDBOOK OF HOUSE PROPERTY: A Popular and Practical Guide to the Purchase, Mortgage, Tenancy, and Compulsory Sale of Houses and Land, including the Law of Dilapidations and Fixtures. By E. L. TARBUCK, Architect. Fifth Edition, Enlarged. 12mo, 5s. cloth.

"The advice is thoroughly practical."—*Law Journal.*

LONDON: CROSBY LOCKWOOD & SON, 7, STATIONERS' HALL COURT, E.C.
Complete Catalogue on Application.

NEARLY

Five Thousand Orphan Waifs

ARE ALWAYS BEING

MAINTAINED, EDUCATED, & TAUGHT TRADES

IN

"Dr. Barnardo's Homes."

"Christian, Protestant, Evangelical, but not Sectarian" is the religious motto of the Institutions. The work is supported by all sections of Christendom. In their operations all Evangelical Christians may and do join hands.

Applications for urgent cases are received at any hour of the day or night.

Destitute Children of any **age** or **creed**, of either **sex**, and of any **nationality** are eligible.

Deaf or Dumb, Blind or Crippled Children, or those Diseased and already Given Over to Death, are, **if destitute**, always eligible.

The most searching enquiry is made into every application, but no really destitute boy or girl is ever rejected. Each case is determined solely upon its merits, without election and without the intervention of wealthy patrons.

Over 35,000 Children have been received since 1866. From **40** to **60** Fresh Cases are admitted during the Winter Months.

About **1,500** Young Children are now Boarded Out in Rural Districts under careful supervision.

Technical Training in some one of the **Fourteen** Handicrafts carried on in the Homes is given to every **Lad** capable of receiving it.

All the **Girls** are brought up in Cottages on the Family System, or are boarded out in the Country, and carefully instructed in the various branches of Domestic Service.

10,013 Trained and Tested Children have already been placed out in the Colonies. Of these **98** per cent. have been successful.

Four Lodging Houses and a Night Refuge, open in the Metropolis, and **Eight "Ever Open Doors"** in Provincial Towns, are accessible throughout all hours of the day and night to Homeless "Waifs and Strays" seeking temporary shelter.

In all, these Institutions now include **86** distinct Homes, dealing with every age and class of destitute and needy childhood, and **24** Mission Branches.

The Homes are supported solely by the free-will offerings of the benevolent. **£140** is required every day for food alone.

FUNDS ARE URGENTLY NEEDED FOR FOOD AND MAINTENANCE.

Donations and Subscriptions gratefully received by the Treasurer, WILLIAM FOWLER, Esq.; by the Chairman of Committee, HOWARD WILLIAMS, Esq.; by the Founder and Director, DR. THOS. J. BARNARDO; or by the Bankers, LONDON AND SOUTH-WESTERN BANK, and Messrs. PRESCOTT, DIMSDALE AND CO.

JOHN ODLING, *Secretary.*

18 to 26, STEPNEY CAUSEWAY, LONDON, E.

THE SOLICITORS' LAW STATIONERY SOCIETY, LTD.,

22, CHANCERY LANE, LONDON, W.C.

TELEGRAPHIC ADDRESS, "OYEZ," LONDON. *Branches*— TELEPHONE NUMBER, 172 HOLBORN.

12, New Court, Carey Street, W.C.
49, Bedford Row, W.C. 33, Lawrence Lane, Cheapside, E.C.
Manchester: 18, Tib Lane.

FORMS OF AGREEMENT.

The following Forms have been carefully prepared so as to be applicable with slight modifications to most cases where a simple Agreement is required. Price 6d. each or 5s. dozen, except where otherwise stated.

1. Agreement for Letting. (Short Form). *2d.*
2. ,, for Letting House 4d. each; 3s. 6d. dozen.
2a. ,, for Letting House (Stringent Form).
3. ,, for Letting Furnished House or Apartments.
3*. ,, ,, ,, ,, ,,
3a. ,, for Letting Offices.
4. ,, for Lease.
5a. ,, for Sale and Purchase of Public House.
5b. ,, between Manager and Landlord of Public House (Manager holding Licence).
5c. ,, between Manager and Landlord of Public House (Landlord holding Licence).
6. ,, for Sale of Business.
7. ,, for Sale and Purchase of Leaseholds.
7a. ,, for Sale and Purchase of Leaseholds (very full form).
8. ,, for Sale of Freeholds.
8a. ,, for Sale of Freeholds (very full form).
9. ,, for Partnership.
10. ,, for Contract of Hiring (Master and Servant).
11. ,, for Reference to Arbitration.
12. ,, for Building and Granting Lease.
13. ,, for Hire of Furniture.
14. ,, for Hire of one Article (Piano or otherwise).
15. ,, for Building and General Conditions. *1s. each.*
16. ,, between Dairyman and Milk Carrier.
17. ,, for Letting Land (allotments).
18. ,, for Letting Windows or Seats to View.

FORMS OF WILL. *Price 6d. each.*

1. Devise and Bequest of Real and Personal Estate to one or more Persons absolutely.
2. ,, in trust for Sale, and to Pay Proceeds, &c.
3. ,, to Executors in trust for Children, with maintenance and appointment clauses.
4. ,, to Wife for life, then to children absolutely.
5. ,, to Wife absolutely.
6. Blank Form of Will.
7. Codicil.
8. Instructions for due execution of Will. Price *2d.*

A complete Catalogue of Law Forms (64 pages) will be sent on application.

WM. DAWSON & SONS, LTD.

(ESTABLISHED 1809)

Branches:
CANNON ST.
CRAVEN ST.
CARDIFF.
EXETER.
LEICESTER.

Cannon House,
Bream's Buildings,
LONDON, E.C.

RECEIVE SUBSCRIPTIONS FOR ALL

NEWSPAPERS, MAGAZINES, AND PERIODICALS.

Messrs. WM. DAWSON & SONS being the largest Subscription Agents in London, their facilities for collecting and despatching are unequalled.

A useful Price List of Subscriptions, containing all the principal Newspapers, Magazines, &c., sent gratis.

ESTABLISHED **1851.**

BIRKBECK BANK

SOUTHAMPTON BUILDINGS, CHANCERY LANE, LONDON, W.C.

INVESTED FUNDS **£10,000,000**

Number of Accounts, 85,094.

TWO-AND-A-HALF per CENT. INTEREST allowed on DEPOSITS, repayable on demand.

TWO per CENT. on CURRENT ACCOUNTS, on the minimum monthly balances when not drawn below £100.

STOCKS, SHARES and ANNUITIES purchased and sold for customers.

SAVINGS DEPARTMENT.

Small Deposits received, and Interest allowed monthly on each completed £1.

Telephone No. 5 *Holborn.* THE BIRKBECK ALMANACK, with full particulars, post-free.
Telegraphic Address: "BIRKBECK, LONDON." FRANCIS RAVENSCROFT, *Manager.*

GEORGE PRICE'S

CELEBRATED PATENT

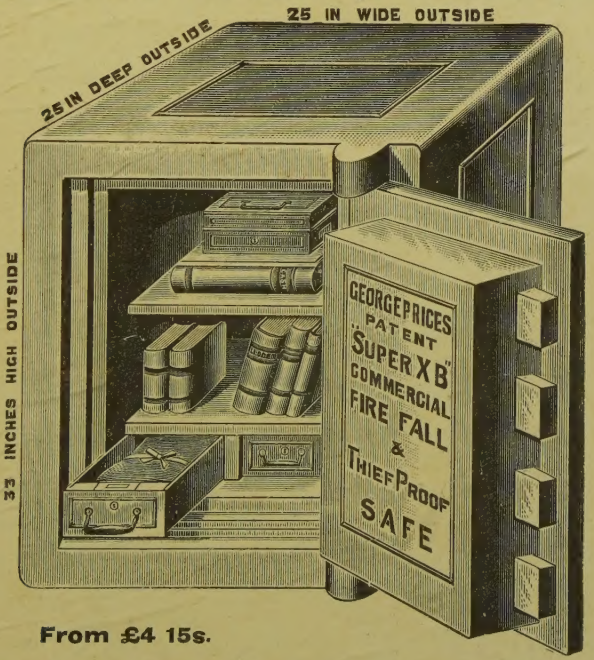
'BENT-STEEL' SAFES

And Strong-Room Doors

AS USED BY HER MAJESTY'S GOVERNMENT

ARE BEST AND CHEAPEST—QUALITY CONSIDERED

REFUSE IMITATIONS.



THE ORIGINAL "BENT-STEEL" SAFE.

From £4 15s.

Perfectly preserved their contents in the Great Fires at Glasgow, Melbourne and Sunderland.

Write for Price Lists and Testimonials to—

GEORGE PRICE, LTD. (The original Firm),

CLEVELAND WORKS, WOLVERHAMPTON.